Adoptive parents

rights to leave and pay when a child is placed for adoption within the UK

Department of Trade and Industry
Introduction

This is a guide to adoption leave and pay and paternity leave and pay. It sets out the minimum amounts of leave and pay which employees are entitled to when a child is placed for adoption within the UK. It also explains what an employee can do if they feel their employer has denied them these rights.

Where a couple are adopting jointly one of them may opt to take adoption leave and pay and the other paternity leave and pay. Where an individual is adopting they may take adoption leave and pay and their partner may also be entitled to paternity leave and pay. A separate guide Working fathers – rights to paternity leave and pay (PL 517) covers the similar rights for employees whose partner or wife is expecting a baby.

Both the rights to adoption leave and pay and paternity leave and pay apply to employees when a child is newly placed for adoption with an adopter on or after 6 April 2003.

This guide only covers the leave and pay rights which are available when an adopter is matched with a child and the child is placed for adoption within the UK. There are similar provisions where a child is adopted from overseas, although the detailed operation of the scheme differs slightly for practical reasons. For further guidance see www.dti.gov.uk/er/overseasadoption.htm


Note that this is general guidance only: it has no legal force and cannot cover every point and situation. It describes the position which applies in
England, Wales and Scotland. For Northern Ireland, corresponding legislation applies and came into force on the same date.

The rate of Statutory Adoption Pay (SAP) and Statutory Paternity Pay (SPP) given in this guidance is correct at the date of publication. The rate is subject to revision each April. Your local Inland Revenue office can advise you of the current rate.

Adoption and paternity leave and pay are part of a package of rights and benefits designed to give support to working fathers and mothers and their partners. Section 9 summarises other important rights and benefits. Section 10 explains where you can go to get further advice on employment legislation. It also lists the guidance booklets available on employment legislation and explains how you can get copies. Details of where to obtain booklets referred to but not listed in Section 10 are given where they are mentioned in the text.

The latest version of this booklet is published on the Internet at www.dti.gov.uk/er/individual/adoption-pl518.pdf

For further information on employment relations issues, see www.dti.gov.uk/er

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Help

For further help with adoption and paternity leave, please contact the Acas helpline on 08457 47 47 47.

For further help with adoption and paternity pay, employers can contact the Inland Revenue on 08457 143 143; employees should contact their local Inland Revenue office – you’ll find them in your local telephone book under ‘Inland Revenue’.

For interactive tailored guidance on adoption or paternity leave and pay see www.tiger.gov.uk
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Section 1: Outline of the rights

Explanation of terms used in this guide

An adopter is a person who has been matched with a child for adoption or, if a couple have been matched jointly, the member of the couple who has chosen to take adoption leave and/or SAP. Until 2004 only married couples may adopt jointly.

An adoption agency has the meaning given to it in section 1(4) of the Adoption Act 1976 in England and Wales: in Scotland, it has the meaning given to it in section 1(4) of the Adoption (Scotland) Act 1978.

A person is matched with a child for adoption when an adoption agency decides that the person would be a suitable adoptive parent for the child, either individually or with another person.

A person is notified of having been matched with a child on the date on which they receive notification of the agency’s decision under regulation 11(2) of the Adoption Agencies Regulations 1983 or regulation 12(3) of the Adoption Agencies (Scotland) Regulations 1996.

The placement of a child for adoption occurs when the child goes to live with the adopter permanently with a view to being formally adopted in the future.

A partner means a person who lives with the adopter and the child in an enduring family relationship but is not an immediate relative.

1 This may include a male or female in a same sex relationship.
What are the rights?

Adoption leave and pay

The rights to adoption leave and Statutory Adoption Pay (SAP) allow an eligible employee who is adopting a child to take time off when a child is placed with them for adoption. An eligible employee is entitled to 26 weeks’ ordinary adoption leave and a further 26 weeks’ additional adoption leave, running from the end of ordinary adoption leave. During the period of ordinary adoption leave the employee may also be entitled to Statutory Adoption Pay (see Section 5 for further information on SAP).

Paternity leave and pay

The rights to paternity leave and Statutory Paternity Pay (SPP) allow an eligible employee to take paid leave to care for their child or to support the adopter following placement for adoption. They can take either one week’s or two consecutive weeks’ paternity leave and during this time may be entitled to SPP (see Section 5 for more information on SPP).

Employees who take ordinary adoption leave or paternity leave are entitled to return to the same job: employees who take additional adoption leave are entitled to return to the same job or, if that is not reasonably practicable, a suitable alternative (see Section 6). Employees taking adoption or paternity leave are also protected against unfair treatment (detriment) and dismissal on grounds related to taking adoption or paternity leave (see Section 7).
When do the rights take effect?

Legislation lays down that:

• Adoption leave and pay and paternity leave and pay are available to employees where an adoption agency notified the adopter of a match with a child on or after 6 April 2003.

• Adoption leave and pay and paternity leave and pay are also available to employees where an adoption agency notifies the adopter of a match with a child before 6 April 2003, but the child is placed on or after 6 April 2003 (special notice arrangements apply – see Section 4).

Who qualifies for these rights?

These rights apply to employees, regardless of the hours they work, provided that they satisfy the other qualifying conditions. These include 26 weeks’ qualifying service with their employer (ending with the week in which the adopter was notified of having been matched with a child) (see Section 2).

• To qualify for adoption or paternity leave, a person must be an employee, that is to say must work under a contract of employment.2

• To qualify for Statutory Adoption Pay (SAP) or Statutory Paternity Pay (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 their Class 1 National Insurance contributions3 and must be earning at least the Lower Earnings Limit to qualify for SPP or SAP (see Section 5).

2 In cases of doubt, 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).

3 In cases of doubt contact your local Inland Revenue office and ask for the Status Inspector.
The vast majority of people who qualify for leave will also qualify for pay, and vice versa, but there are a few exceptions noted below.

A self-employed person who chooses to take time off when a child is placed with them for adoption, or someone who is not working may be able to claim other benefits – these are summarised in Section 9.

**Are there any particular types of workers these rights may not apply to?**

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/SPP.

Office holders – such as police officers, MPs, the judiciary and some company directors – will similarly generally only qualify for pay, not leave. The same applies to members of the armed forces.

**What happens if an employer has their own leave scheme for employees who are adopting?**

This guidance is about employees’ statutory rights to adoption and paternity leave under employment legislation. They cannot contract out of these rights. Those employees whose employment contracts give them entitlements to adoption or paternity leave may take advantage of those contractual rights or their statutory rights, depending on which are more favourable. Employees who believe they are not entitled to the statutory rights described here should check whether they are entitled to take leave under their contracts.

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4 In cases of doubt, 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).
What happens if an employer has their own adoption or paternity pay scheme?

The employer must pay the SAP or SPP the employee is entitled to. If the employee is also entitled to contractual pay for the same period for which they are entitled to SAP or SPP and it is more than the SAP or SPP, the employer should top up the SAP or SPP to the amount of the contractual paternity pay.
Statutory Employment Rights
What makes an employee eligible for adoption leave and pay?

Adoption leave

The employee must:

• have been matched with a child to be placed with them by a UK adoption agency;
• have notified the agency that they agree that the child should be placed with them and on the date of placement;
• have been continuously employed by the same employer for at least 26 weeks ending with the week (beginning with the Sunday and ending with the Saturday) in which they are notified of having been matched with the child; and
• notify their employer of when they want to take their adoption leave within 7 days of the date on which they are notified of having been matched with the child.

SAP

The employee must:

• have been matched with a child to be placed with them by a UK adoption agency;
• have notified the agency that they agree that the child should be placed with them and on the date of placement;
• have worked continuously for the same employer for at least 26 weeks into the week (beginning with the Sunday and ending with the Saturday) in which they are notified of having been matched with the child;
• notify their employer of when they want to receive SAP at least 28 days before the date they want it to begin; and
• have average weekly earnings at or above the Lower Earnings Limit for National Insurance which applied at the end of the matching week.
What makes an employee eligible for paternity leave and pay?

Paternity leave

The employee must:

• either be married to or the partner of the child’s adopter;
• have or expect to have main responsibility for the upbringing of the child with the adopter;
• have worked continuously for the same employer for 26 weeks ending with the week (beginning with the Sunday and ending with the Saturday) in which the adopter is notified of having been matched with the child (the ‘matching week’);
• continue to work for the employer from the week in which the adopter is notified of having been matched with a child up to the date of placement;
• notify their employer of when they intend to take their paternity leave within 7 days of the date on which the adopter is notified of being matched with a child; and
• be taking the time off either to support the adopter or to care for the newly placed child – they cannot take the leave for any other purpose.

SPP

The employee must:

• either be married to or the partner of the child’s adopter;
• have or expect to have main responsibility for the upbringing of the child with the adopter;
• have worked continuously for the same employer for 26 weeks ending with the week (beginning with the Sunday and ending with the Saturday) in which the adopter is notified of having been matched with the child;
continue to work for that employer from the week in which the adopter is notified of being matched up to the date of placement;

notify their employer of when they want to receive SAP at least 28 days before the date they want it to begin.

have average weekly earnings at or above the Lower Earnings Limit for National Insurance which applied at the end of the matching week; and

be taking the time off either to support the adopter or to care for the newly placed child – they cannot take the leave for any other purpose.

What counts as working continuously for the period needed to qualify for pay and leave?

Continuous employment generally means working for the same employer without a break, but this is not always the case. An employee’s continuity of employment for the purposes of qualifying for adoption leave and SAP or paternity leave and SPP will not be regarded as broken in certain circumstances. For more information on the law in this area, see Continuous employment and a week’s pay (PL 711).

If an employee’s contract ends before placement will they qualify for SAP or SPP?

SAP

If an eligible employee leaves their job for any reason (including dismissal) they are still entitled to SAP. However, if they start work for a different employer (one they weren’t employed by in the week they were notified of having been matched with the child) they won’t be able to receive SAP for any week they do any work for the new employer.

If the contract ends before pay starts, pay shall begin fourteen days before the expected date of placement; if the contract ends within those fourteen days, pay begins the day following the last day of work.
SPP

The employee will not be entitled to SPP if their contract ends before placement.

**If an employee’s contract ends after placement will they qualify for SAP or SPP?**

An eligible employee is still entitled to SAP or SPP if their contract ends after the child is placed. However, if they start work for a new employer they cannot get SAP or SPP for any week they work for the new employer.

**If an employee changes jobs before placement will they qualify for adoption or paternity leave and SAP or SPP?**

**Adoption leave**

Unless the new employer is an associated employer the employee probably won’t qualify for adoption leave. The booklet *Continuous employment and a week’s pay* (PL 711) will tell you more about when time with a previous employer may count towards continuity of employment.

**SAP**

If they start work for a different employer (one they weren’t employed by in the week they were matched with the child) an employee won’t be able to receive SAP for any week they do any work for the new employer.

**Paternity leave**

Unless the new employer is an associated employer the employee probably won’t qualify for paternity leave. The booklet *Continuous employment and a week’s pay* (PL 711) will tell you more about when time with a previous employer may count towards continuity of employment.
SPP

Unless the new employer is an associated employer the employee probably won’t qualify for pay. The booklet *Continuous employment and a week’s pay* (PL 711) will tell you more about when time with a previous employer may count towards continuity of employment.

**What happens if the employer decides the employee doesn’t qualify for SAP or SPP and adoption or paternity leave?**

**SAP or SPP**

If the employer decides that the employee is not entitled to SPP or SAP for any reason, they must give them a written statement. The forms SPP1 *I cannot pay you Statutory Paternity Pay* and SAP1 *I cannot pay you Statutory Adoption Pay* (available from the Inland Revenue Employer’s Orderline on 08457 646 646) can be used for this.

If the employee disagrees, they should first discuss it with their employer and ask them for an explanation. If the employee is still unhappy they should contact an Inland Revenue office to ask for a decision – see Section 5 for more information.

**Adoption or paternity leave**

If the disagreement is about adoption or paternity leave, the employer or employee may contact Acas on 08457 47 47 47.
Can an employee take both adoption leave and paternity leave?

An employee can choose to take either adoption leave or paternity leave when a child is placed with them for adoption. Where a couple are adopting jointly, they must decide which of them is going to take adoption leave and which of them is going to take paternity leave. Where an individual is adopting they may take adoption leave. If they have a partner, their partner may take paternity leave.
Section 3: Period of leave

How much leave can an employee take?

Adoption leave

Eligible employees can take up to 52 weeks adoption leave. This is made up of 26 weeks ordinary adoption leave, followed immediately by 26 weeks additional adoption leave.

Employees can take only one period of leave even if more than one child is placed for adoption at one time.

Paternity leave

Eligible employees can choose to take either one week or two consecutive weeks’ paternity leave. It can’t be taken as odd days or as two separate weeks.

Employees can take only one period of leave even if more than one child is placed for adoption at one time.

When can an employee start their leave and pay?

Adoption leave and SAP

Adoption leave and SAP can’t start before 6 April 2003. The earliest an adopter can begin their adoption leave and pay is 14 days before the expected date of placement. Otherwise, an adopter can choose to begin their leave and SAP on:

• The date on which the child is placed with them for adoption; or
• A predetermined date no more than 14 days before the date on which the child is expected to be placed for adoption (and no later than the expected date of placement).

Employees must give their employer the required notice of their leave. Special arrangements apply if the adopter was notified of being matched with a child before 6 April 2003 – see Section 4.
**Paternity leave and SPP**

Paternity leave and SPP can’t start before 6 April 2003. An employee can only take paternity leave and pay in the 56 days beginning with the date on which the child is placed for adoption. Otherwise, an employee can choose to begin their leave and pay on:

- The date on which the child is placed with the adopter (whether this is earlier or later than expected); *or*
- A predetermined date falling after the expected date of placement; *or*
- A date falling a specified number of days after the expected date of placement.

Employees must give their employer the required notice of their leave, and special notice arrangements apply if notification of matching is before 6 April 2003 – see Section 4.

**Can an employee change their mind about when their leave starts?**

An employee can change the date on which they want to start adoption or paternity leave as long as they give their employer the required notice (see Section 4).

**What happens if the placement is disrupted during leave?**

**Adoption leave and pay**

If an employee begins a period of adoption leave before the placement of the child and is then told that the placement will not be made or during adoption leave the child dies or returns to the adoption agency then the employee’s leave will normally finish eight weeks after the end of the week in which the disruption took place.
Payment of SAP continues for eight weeks after the end of the week in which the disruption took place or until the end of the adopter’s 26 week SAP period if that is sooner.

Employees must remember to give their employer 28 days’ notice if they are returning to work earlier than expected because of a disruption (see Section 4).

**Paternity leave and pay**

If the adopter is told before paternity leave has started that the child will not be placed with them, the employee will not be able to take paternity leave or receive SPP. If the child is placed and a disruption occurs after placement the employee will be entitled to paternity leave and SPP as planned.

**What should an employee do if the date of placement is earlier or later than expected?**

If the date of placement changes, the employee should discuss the situation with their employer and give the appropriate notice to change the start date (see above). If employer and employee are unable to resolve any disagreement about leave, they should contact Acas on 08457 47 47 47: if the disagreement is about pay they should contact the Inland Revenue for advice (see Section 10 for contact details).

**What happens if a placement is delayed but adoption leave has already begun?**

If an employee plans to start adoption leave at any time before the actual date of placement, they must be sure that the placement will be going ahead on the date agreed before they start their leave.

If the placement is delayed for whatever reason and the employee has already begun their adoption leave, they cannot stop leave and start it again at a later date.
Section 4: Notification and evidence required for leave and pay

When must an employee tell their employer that they are going to take leave?

Adoption leave
An employee must tell their employer they intend to take adoption leave no more than seven days after the day they are notified of having been matched with the child or, if this isn’t possible, as soon as reasonably practicable. They can tell their employer earlier than this if they wish.

Paternity Leave
An employee must tell their employer they intend to take paternity leave no more than seven days after the day the adopter is notified they have been matched with the child or, if this isn’t possible, as soon as reasonably practicable. They can tell their employer earlier than this if they wish.

NOTE: it is recommended that employees notify their employer of their intention to take adoption or paternity leave when they or their partner are approved for adoption. This may be before an employee has received, or needs to submit, their documentary evidence (see below) but it will allow employers time to plan for the intended period of leave.

When must an employee tell their employer that they want to receive SAP or SPP?
To qualify for SAP or SPP, an employee must give their employer at least 28 days notice of the date on which they want their SAP or SPP to begin – or, if this is not reasonably practicable, as soon as is reasonably practicable.

Where an employee is entitled to both leave and pay, the notice they give for leave can count for pay as well.
**What must an employee tell their employer if they want to take adoption or paternity leave?**

**Adoption leave**

The employee must tell their employer (in writing if the employer requests it):

- that they intend to take adoption leave;
- the date on which the child is expected to be placed for adoption with them; and
- the date they intend to start their adoption leave.

Additionally, if the employer requests it, the employee has to provide documents from the adoption agency (see below *What evidence must an employee give their employer if they want to take adoption or paternity leave?*).

**Paternity leave**

The employee must tell their employer (in writing if the employer requests it):

- the date on which the adopter was notified of having been matched with the child;
- the date on which the child is expected to be placed for adoption;
- the length of leave (one or two weeks) they have chosen to take; and
- the date they have chosen to start their leave.

They must also give a signed declaration if the employer requests it (see below – *What evidence must an employee give their employer if they want to take adoption or paternity leave?*).

- **After the placement** the employee must inform their employer of the date on which the child was placed. This should be done as soon as reasonably practicable after placement.
What evidence does the employee have to give their employer if they want to take adoption or paternity leave?

Adoption leave

If their employer requests it the employee should give their employer documents issued by the adoption agency which give information including:

- the name and address of the adoption agency;
- the date they were notified of having been matched with the child; and
- the date on which the child is expected to be placed for adoption.

The matching certificate has been designed to fulfil the requirements for SAP but it can also be used for leave (see below – What is the simplest way for an employee to provide the required information, evidence and declarations for paid paternity or adoption leave?).

Paternity leave

If their employer requests it they must give a signed declaration that:

- they are taking leave to care for the child and/or to support the child’s adopter;
- that they are married to or the partner of the child’s adopter; and
- that they have, or expect to have, the main responsibility (apart from the adopter’s responsibility) for the upbringing of the child.

The self-certificate Becoming an adoptive parent (SC4) (reproduced at Appendix 2) can be used for this and to fulfil the requirements for claiming SPP (see below – What is the simplest way for an employee to provide the required information, evidence and declarations for paid paternity or adoption leave?).
**What must an employee tell their employer if they want to receive SAP or SPP?**

**SAP**

They must tell their employer (in writing if the employer requests it):

- the date on which they expect payment to start;
- the date on which the child is expected to be placed for adoption with them; and
- if they have chosen that their pay should begin on the date the child is placed for adoption with them, the date of the placement (as soon as is reasonably practicable after it has happened).

They must also give documentary evidence of certain facts (see following question).

**SPP**

They must tell their employer (in writing if the employer requests it)

- the date on which they expect payment to start; and
- if they have chosen to begin their pay on the date the child is placed for adoption or a date falling a specified number of days after the date of placement, they must tell their employer the actual date of placement (as soon as reasonably practicable after it has happened).

SPP cannot start until after the child is placed so if the employee has chosen to start their pay on a predetermined date and the child is in fact placed for adoption later than that date they must tell their employer as soon as is reasonably practicable the new date on which they want their pay to start.

They must also give written evidence and a signed declaration (see following question).
What evidence must an employee give their employer if they want to receive SAP or SPP?

**SAP**

They must give their employer documentary evidence of the following:

- the name and address of the adoption agency;
- the name and address of the person claiming SAP;
- the date on which the child is expected to be placed for adoption (or, if it has already happened, the actual date of placement); and
- the date they were notified of having been matched with the child.

The documentary evidence should be given in the form of document(s) issued by the adoption agency. The matching certificate (see *What is the simplest way for an employee to provide the required information, evidence and declarations?* below) can be used for this purpose and at the same time to fulfil the requirements for giving notification for leave.

They must also give a declaration that they have chosen to receive SAP and not SPP. This can be done orally or in writing (see *What is the simplest way for an employee to provide the required information, evidence and declarations?* below).

**SPP**

They must give their employer the following in writing as evidence of their entitlement:

- the name of the person claiming SPP;
- the date on which the child is expected to be placed for adoption (or, if it has already happened, the actual date of placement);
- the date on which they expect SPP to begin;
- whether they are claiming one or two weeks’ SPP; and
- the date the adopter was notified of having been matched with the child.
They must also give a declaration:

- as to their relationship with the adopter;
- that they will have responsibility for the child’s upbringing, and that they are taking time off to support the adopter or to care for the child; and
- that they have chosen to receive SPP and not SAP.

(See *What is the simplest way for an employee to provide the required information, evidence and declarations?* below).

### What is the simplest way for an employee to provide the required information, evidence and declarations?

#### Adoption leave and SAP

Employees may wish to fill out the adoption leave plan form on the Government’s interactive employment rights website www.tiger.gov.uk to give the required information to their employer.

The matching certificate reproduced at Appendix 1 can be used as documentary evidence that the employee has been matched with a child. The adoption agency may complete this and supply it to the adopter.

In addition, the employee can provide the declaration that they have chosen to receive SAP and not SPP by writing to their employer as follows:
Dear [insert name of employer],

I have provided you with the relevant documentary evidence from the adoption agency as proof of my entitlement to Statutory Adoption Pay. In addition, please accept this letter as my declaration to you that I have elected to receive Statutory Adoption Pay and not Statutory Paternity Pay in respect of this adoption.

Yours sincerely,

Paternity leave and SPP

An employee can give their employer a completed self-certificate as evidence of their entitlement. The model self-certificate Becoming an adoptive parent (SC4) reproduced at Appendix 2 can be used for this purpose. The employer should accept this declaration at face value unless they have very good reasons for believing it is false.

What are the special notice arrangements which apply where an adopter was notified of being matched for adoption before 6 April 2003?

Although adoption and paternity leave and SAP and SPP may be available where the adopter was notified of being matched with a child before 6 April 2003, employees will only be eligible where the child is actually placed on or after 6 April 2003.

Adoption leave

The employee must choose to begin their leave on a predetermined date which is after 6 April 2003. They must give their employer at least 28 days notice of that date.
SAP

The employee must choose to begin to receive SAP on a predetermined date which is after 6 April 2003 and no more than 14 days before the date on which the child is expected to be placed. They must give their employer at least 28 days notice of that date, unless the employer agrees SAP can begin with less than 28 days notice.

Paternity leave

The employee must choose to begin their leave on a predetermined date which is after 6 April 2003. Leave must still be completed within 56 days of the date of the child’s placement. They must give their employer 28 days notice of the date they want to start their leave.

SPP

The employee must choose to begin to receive SPP on a predetermined date which is after 6 April 2003. They must give their employer at least 28 days notice of that date, unless the employer agrees SPP can begin with less than 28 days notice.

What notice must an employee give if they want to change the date their leave starts?

Adoption leave

The employee can change the date on which they want their leave to start as long as they give their employer notice as follows:

• if they want to change their leave so it starts on the date of placement, at least 28 days before the expected date of placement; and
• if they want to change their leave so it starts on a predetermined date, at least 28 days before that date.
If this isn’t possible, they should tell their employer as soon as is reasonably practicable.

Where the employee was notified of having been matched with the child before 6 April 2003 and has selected a predetermined date after 6 April 2003 for leave to begin they may only change the date by substituting a different predetermined date.

**Paternity leave**

The employee can change the date on which they want their leave to start as long as they give their employer notice as follows:

- if they want to change their leave so it starts on the date of placement, at least 28 days before the expected date of placement;
- if they want to change their leave so it starts on a date falling a specified number of days after the expected date of placement, at least 28 days before the date which falls the same number of days after the expected date of placement; and
- if they want to change their leave so it starts on a predetermined date, at least 28 days before that date.

If this isn’t possible, they should tell their employer as soon as is reasonably practicable.

Where the adopter was notified of having been matched with the child before 6 April 2003, if an employee has selected a predetermined date after 6 April 2003 for paternity leave to begin they can only change the date by substituting a different predetermined date.
What should an employee do if the date of placement is earlier or later than expected?

If the date of placement changes before leave begins, the employee should discuss the situation with their employer and give the appropriate notice to change the start date (see above). If employer and employee are unable to resolve any disagreement about leave, they should contact Acas on 08457 47 47 47: if the disagreement is about pay they should contact the Inland Revenue for advice (see Section 10 for contact details).

What should an employer do once their employee has notified them that they want to take adoption or paternity leave?

Adoption leave

An employer who has had proper notification of the intended start date for adoption leave should in turn notify their employee of the date on which their adoption leave will end. The employer should give this notification of the date adoption leave will end within 28 days of receiving the employee’s notification. Employers can use the model letter at Appendix 3 of this guide to respond to their employee.

If an employer doesn’t inform the employee of their expected date of return and they return to work on an incorrect day, the employer can’t start disciplinary proceedings.

Paternity leave

There is no requirement for an employer to write in response to an employee’s notification of paternity leave.
What notice must an employee give if they want to return to work early from adoption leave?

Employees will be expected to return to work when they have taken their full 52 weeks’ adoption leave entitlement. (The employer should have set out the date they are due to return in the letter acknowledging notification of leave). If they wish to return before this the employee must give their employer 28 days’ notice of the date they intend to return.

If the employee doesn’t give 28 days’ notice the employer is entitled to postpone the date of their return for 28 days, although it cannot be postponed beyond the date on which the leave would normally end.

Can an employee involved in an industrial dispute give notice that they are going to take adoption or paternity leave?

If an employee is involved in an industrial dispute, they can still give their employer notice of the date their adoption leave or paternity leave will start. This date can be within the period of the dispute. Any notice that the employee has already given to their employer is not affected by a subsequent trade dispute.

How should an employee give notice if they intend to take parental leave immediately before or after their adoption or paternity leave?

They should give the required notice for parental leave as well as their notice for adoption or paternity leave. For further details about parental leave, see Parental leave: a guide for employers and employees (PL 509).
What are Statutory Adoption Pay and Statutory Paternity Pay?

During their *adoption leave*, most employees will be entitled to Statutory Adoption Pay (SAP) from their employer. SAP is a weekly payment made by employers for up to 26 weeks.

During their *paternity leave*, most employees will be entitled to Statutory Paternity Pay (SPP) from their employer. SPP is a weekly payment made by employers for either one or two weeks depending on the period the employee has chosen.

Employers should refer to the Inland Revenue Employer’s Helpbook E16 *Pay and time off work for adoptive parents*, which explains in detail what they have to do to work out if their employee is entitled to SAP or SPP and how much to pay and when. There is also a supplement to the E16 which covers special cases.

The Help Book, supplement and forms referred to in this section are available from the Inland Revenue Employer’s Orderline on 08457 646 646 apart from the matching certificate which can be used for giving documentary evidence for SAP purposes. The matching certificate is reproduced at Appendix 1 of this guide. The self-certificate form SC4 *Becoming a parent* to be used as evidence for SPP is also reproduced in this guide at Appendix 2.
What must an employee do to get SAP or SPP?

SAP

An employee must give their employer the required notice and evidence (see section 4) at least 28 days before they want their SAP to start. This evidence must come from the adoption agency, either in the form of letter(s) or by completing the matching certificate reproduced at Appendix 1. If the employee has already done this for the purposes of claiming leave, they will have fulfilled the notice requirements for pay as well.

SPP

An employee must give their employer the required evidence (see section 4) at least 28 days before they want their SPP to start. Form SC4 Becoming an adoptive parent may be used for this. If they have already done this for the purposes of claiming leave (see Section 4), they will have fulfilled the notice requirements for pay as well.

If the employee can’t give their employer the required evidence 28 days before they want payment of SAP or SPP to begin, they must do it as soon as possible and explain why it is late. The employer should accept this if the employee has a good reason for telling them late. If the employer thinks that the employee didn’t have a good reason, they can refuse to pay SAP or SPP.

What must an employer do when an employee tells them they want to be paid SAP or SPP?

The employer must check whether the employee satisfies the qualifying conditions. As well as giving the employer notice on time and the appropriate information, evidence and declarations (see Section 4), the employee must meet the eligibility conditions (see Section 2). These include having average weekly earnings at or above the Lower Earnings Limit for National Insurance purposes which applies at the end of the week the adopter is notified of having been matched with the child. Full guidance for employers is given in the Inland Revenue Employers’ Helpbook E16.
How are average weekly earnings calculated in order to find out if an employee qualifies for SAP or SPP?

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 is notified of having been matched with a child for adoption. All the pay the employee got in that period must be taken into account. Pay means earnings which are liable for Class 1 National Insurance contributions, or earnings which would be liable if they were high enough. Detailed guidance on this is given in the Inland Revenue Employer’s Helpbook E16.

If the adoption agency told the adopter that they had been matched with a child between 31 March 2002 and 5 April 2003 to qualify for SAP or SPP the employee’s average weekly earnings must be £75 or more.

If the adoption agency told the adopter that they had been matched with a child between 6 April 2003 and 3 April 2004 to qualify for SAP or SPP the employee’s average weekly earnings must be £77 or more.

How is an employee’s entitlement to SAP or SPP worked out if they are working for more than one employer?

If an employee has more than one employer, they may be entitled to SAP or SPP from each one. The same is true if they have more than one contract with the same employer, as long as their National Insurance contributions are paid separately for each contract.

Employees working for the NHS may have two or more contracts of employment split between different NHS bodies such as Strategic Health Authorities, NHS trusts or primary care trusts. They can sometimes choose whether to have SAP or SPP from each separate contract or to have their contract treated as one.
For guidance on the special rules in such situations please see the Inland Revenue Employer’s Helpbook E16 supplement.

**Can an employer make deductions from SAP and SPP?**

SAP and SPP are treated as earnings so an employer should make any deductions that are due, such as income tax and NI contributions, pension contributions or trade union subscriptions, from SAP and SPP. The only exception is an Attachment of Earnings Order. As with other earnings, the employer should not make unauthorised deductions.

**How is the employee paid SAP and SPP?**

SAP and SPP are weekly payments due at the end of each SAP or SPP week. They will usually be paid in the same way, and at the same time as the employee’s wages would be paid.

SAP and SPP weeks can start on any day. For example, if an employee starts their leave on a Tuesday, then a week’s SAP or SPP runs from the Tuesday to the next Monday. This may mean that employers have to pay a mixture of wages and SAP or SPP at the end of the leave period.

SAP and SPP can be paid through an insurance company, friendly society, payroll service or other third party, but it cannot be paid in kind, or as board and lodging, or by way of a service.

**SAP**

SAP cannot be paid for more than 26 weeks. It cannot be paid for any SAP week in which the employee does some work for the employer or for any other employer who did not employ them during the week in which they were notified of having been matched with the child for adoption, or for any SAP week in which the employee is sick and entitled to be paid Statutory Sick Pay.
SPP

SPP cannot be paid for more than two weeks and it cannot be paid for any SPP week in which the employee does some work for the employer or for any other employer who did not employ them during the week in which they were notified of having been matched with the child for adoption, or for any SPP week the employee is sick and entitled to get Statutory Sick Pay.

For more information about paying SAP and SPP see the Inland Revenue Employer’s Helpbook E16.

How much are SAP and SPP?

From 6 April 2003 the rate of SAP and SPP is £100 a week or 90% of average weekly earnings if this is less than £100.

In a case where more than one child is placed for adoption at the same time, entitlement to SAP and SPP is exactly the same as if there were one child.

Where does the money to pay SAP and SPP come from?

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 and SPP they have to pay.

If they don’t have enough money from this, they can apply to the Inland Revenue for an advance. For more information about this, see the Inland Revenue Employer’s Helpbook E16.

Some employers have to fund 8%: this will depend on their Class 1 National Insurance liability. Again, see the Inland Revenue Employer’s Helpbook E16 for further details.
ADOPTION LEAVE AND PAY
Has employee worked continuously for their employer for 26 weeks ending with the week they are notified of having been matched with a child? SEE SECTION 2

Not eligible for adoption or paternity leave. May be entitled to other statutory leave rights. SEE SECTION 9

Entitled to 52 weeks adoption leave (26 weeks’ ordinary adoption leave & 26 weeks’ additional adoption leave) which can start up to 14 days before placement. SEE SECTION 3

May be entitled to other support or benefits. SEE SECTION 9

Paternity leave and pay

Employee:
• Is married to or partner of adopter?
• Is taking time off to support adopter/care for child?
• Has worked continuously for their employer for 26 weeks ending with the week the adopter is notified of having been matched with a child and continues to work for them up to date of placement? SEE SECTION 2

Entitled to one or two consecutive weeks’ paternity leave, starting on a chosen date on or after placement. Leave must be completed within 56 days of placement. SEE SECTION 3

Average weekly earnings at or above Lower Earnings Limit? SEE SECTION 5

No?
Entitled to 26 weeks’ Statutory Adoption Pay. SEE SECTION 5

Entitled to two weeks’ Statutory Paternity Pay. SEE SECTION 5

NOTICE FOR ADOPTION/PATERNITY LEAVE AND PAY

• For leave, employee must give notice no more than seven days after date adopter is notified of having been matched with a child, and give specific information (and evidence if employer asks for it).
• For pay, employee must give notice no less than 28 days before they want pay to start. Must provide evidence and declarations. Can be given at same time as notice for leave.
• Employer must write to employee within 28 days of receiving notice of adoption leave, confirming the employee’s expected date of return.
• Employee must give 28 days’ notice of any change of date. SEE SECTION 4

RETURN FROM ADOPTION LEAVE

• Ordinary adoption leave: employee returns to same job as if they hadn’t been away. SEE SECTION 6
• Additional adoption leave: employee returns to same job unless this is not reasonably practicable, in which case they should be offered a suitable alternative. SEE SECTION 6
• Employee must give 28 days’ notice if returning to work before end of full 52 weeks’ entitlement. SEE SECTION 4

RETURN FROM PATERNITY LEAVE

Employee returns to same job as if they hadn’t been away. SEE SECTION 6

Placements delayed or early

For adoption or paternity leave employee can change start date but must give 28 days’ notice unless not reasonably practicable. SEE SECTION 3

Placement on expected date

Employee takes leave at specified time. SEE SECTION 3

• During ordinary adoption leave and paternity leave, contract continues and employee benefits from terms and conditions apart from remuneration.
• During additional adoption leave, contract continues and employee benefits from certain terms and conditions. SEE SECTION 6
What should an employer do if their employee doesn’t qualify for SAP or SPP?

If the employer decides that their employee is not entitled to SAP or SPP for any reason, they must give them a written statement. The forms SAP1 *I cannot pay you Statutory Adoption Pay* and SPP1 (*I cannot pay you Statutory Paternity Pay*) can be used for this. These are available from the Inland Revenue Employers Orderline on 08457 646 646.

What can an employee do if they disagree with a decision that they don’t qualify for SAP or SPP?

If an employee disagrees, they should first discuss it with their employer. If they are still unhappy they should contact their local Inland Revenue office to apply for a decision.

The Inland Revenue will look at anything in writing that has to do with the question that has been asked and will ask for more evidence from employee or employer if needed. Both employer and employee will get copies of their decision and both have the right to appeal to the Tax Commissioners within 30 days of the date of the decision.

For more information about appeals see leaflet IR37, which is available from any Inland Revenue office.

Can an employee get any other form of financial support during adoption or paternity leave?

Employees who don’t qualify for SAP or SPP should talk to their adoption agency about financial support available to adopters. They may also be eligible for other benefits (see Section 9 for further details).
Are there any circumstances in which SAP or SPP are stopped?

**SAP** may be stopped if:

- An employee is taken into legal custody at any time during their SAP period. Legal custody means being lawfully detained by the police and/or in prison. The employee should contact their local Inland Revenue office about remaining SAP after their release.

- An employee dies. The employer should pay SAP for the week in which the employee dies but not for any following weeks.

- The placement of the child is disrupted. SAP will usually come to an end 8 weeks after the disruption (see What happens if the placement is disrupted during leave? in Section 3).

- An employee starts work for a new employer after the child is placed with them but before the end of the SAP period.

**SPP** may be stopped if:

- An employee is taken into legal custody at any time during their SPP period. Legal custody means being lawfully detained by the police and/or in prison.

- An employee dies. The employer should pay SPP for the week in which the employee dies but not for any following weeks.

**What happens if the employee is sick when they are planning to take adoption or paternity leave?**

Most people who work for an employer and earn enough on average to equal or exceed the National Insurance lower earnings limit (LEL) get Statutory Sick Pay (SSP) from their employer when they are sick. An employee cannot be paid SAP or SPP for any week in which they are entitled to SSP.
For more information on what to do see the supplement to the Inland Revenue Employer’s Helpbook E16.

**Can an employee get SAP or SPP if their employer can’t pay it?**

If an employer can’t pay SAP or SPP because they are bankrupt or insolvent, the employee should tell their local Inland Revenue office who will arrange payment. The Inland Revenue can, however, only pay SAP or SPP from the first week of the employer’s insolvency. Any SAP or SPP due for earlier weeks remains the responsibility of the employer.

If the employer is not insolvent or bankrupt, but is in financial difficulties or the business is closed, they must still pay SAP or SPP. The employer can apply to the Inland Revenue for funding to pay the SAP or SPP. Employees should be particularly careful to make sure they give their employer their evidence at the right time. If they have any difficulty in getting payment, employees should consult their Inland Revenue office.

**Does an employee have to pay back their SAP or SPP if they don’t return to work after adoption or paternity leave?**

Employees do not have to pay SAP or SPP back even if they do not return to work.
What happens if employees have a contractual entitlement to adoption or paternity leave or pay as well as a statutory one?

If the employee has a contractual right to paternity or adoption leave as well as their statutory right, they may take advantage of whichever is more favourable.

If the employee is also entitled to contractual adoption or paternity pay for the same period they are entitled to SAP or SPP and it is:

- more than the statutory amount, the employer should top up the statutory amount to the amount of contractual paternity pay; or
- less than the statutory amount, the employer must pay the statutory amount.

Does the employee’s contract continue during adoption or paternity leave?

The contract of employment continues throughout adoption leave (both ordinary and additional adoption leave) and paternity leave, unless either the employer or the employee expressly ends it or it expires.

Do employees continue to benefit from their statutory rights while they are on adoption or paternity leave?

The employee continues to qualify for their statutory employment rights and their period of leave counts towards any necessary qualifying service for these rights (including calculating a redundancy payment – for further information on the redundancy payment scheme under the Employment Rights Act 1996, see the booklet *Redundancy entitlement* (PL 808)). The situation is different for contractual terms and conditions (see following question).
Do employees continue to benefit from their contractual terms and conditions while they are on adoption or paternity leave?

**Ordinary adoption leave**

While on ordinary adoption leave, employees are entitled to benefit from all those normal terms and conditions of employment, except for terms relating to wages or salary (unless their contract of employment provides otherwise), which would have applied were they not on adoption leave. The period of leave also counts for assessing seniority, pension rights and other payments based on length of service (such as pay increments) under the contract of employment.

Terms and conditions which an employee should continue to benefit from include participation in share schemes, reimbursement of professional subscriptions, use of a company car or mobile phone (unless it is provided for business use only) and health club membership.

**Additional adoption leave**

While on additional adoption leave, employees are entitled to benefit from their employer’s implied obligation of trust and confidence and any contractual terms relating to the following:

- notice of termination of employment by their employer;
- compensation in the event of redundancy; and
- disciplinary and grievance procedures

Employees are bound by the implied obligation of good faith to their employer, and any contractual terms relating to the following:

- notice of termination of employment by them;
- disclosure of confidential information;
Statutory Employment Rights

• acceptance of gifts or benefits; and
• participation in any other business.

The employer does not have to count the period of additional adoption leave for assessing contractual rights which are dependant on a period of qualifying service, such as seniority, pension rights and other payments based on length of service (such as pay increments) under the contract of employment. For these purposes, service (including ordinary adoption leave) before additional adoption leave is joined up with the period of employment on return to work as if they are continuous with each other.

Paternity leave

While on paternity leave, employees are entitled to benefit from all those normal terms and conditions of employment, except for terms relating to wages or salary (unless their contract of employment provides otherwise), which would have applied were they not on paternity leave. The period of leave also counts for assessing seniority, pension rights and other payments based on length of service (such as pay increments) under the contract of employment.

Terms and conditions which an employee should continue to benefit from include participation in share schemes, reimbursement of professional subscriptions, use of a company car or mobile phone (unless it is provided for business use only) and health club membership.

Can holiday accrue during periods of adoption/paternity 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. Guidance on calculating statutory entitlement to annual leave can be found in the booklet *Your guide to the working time regulations*.

**Additional adoption leave**

The employee will accrue their 4 weeks’ paid annual leave entitlement under the Working Time Regulations. An employee can only accrue their contractual leave entitlement if they agree this with their employer.

**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. Guidance on calculating statutory entitlement to annual leave can be found in the booklet *Your guide to the working time regulations*.

*NOTE: Entitlement to leave 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 or 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 or 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.*
What can an employee do if their employer doesn’t comply with the terms and conditions in their employment contract during adoption or paternity leave?

An employee on adoption or paternity leave who is denied benefits they are entitled to under their contract may seek redress just as if they were at work, through the civil courts by claiming damages for breach of contract or, if the breach is an unlawful deduction from wages, they may make a claim to an employment tribunal (see Section 8).

Employers and employees should contact Acas on 08457 47 47 47 for advice about this issue.

Employees may be able to resign and make a claim for constructive unfair dismissal if the breach of contract is fundamental. Constructive dismissal is, however, a complex area of the law and it is advisable to seek legal advice before doing so, perhaps from a Citizens Advice Bureau or local law centre.

An employee may also present a claim to an employment tribunal that they have been subjected to a detriment by any act, or any deliberate failure to act, by their employer because they took or sought to take adoption or paternity leave (see Section 7).

Can an employee return to their job after taking adoption or paternity leave?

Ordinary adoption leave

At the end of ordinary adoption leave an employee is 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.
They are also entitled to benefit from any general improvements to the rate of pay or other terms and conditions introduced while they were away.

If an employee is not given their job back at the end of ordinary adoption leave, they may make a complaint of unfair dismissal to an employment tribunal (see Section 8).

When ordinary adoption leave is immediately preceded by two or more periods of statutory leave which did not include any period of additional maternity leave or additional adoption leave or parental leave of more than 4 weeks the employee is entitled to return to the job in which they were employed before their absence.

**Additional adoption leave**

After additional adoption leave, whether or not preceded by another period of statutory leave, an employee is entitled to return to the same job on the same terms and conditions in relation to pay as if they had not been absent.

They are also entitled to benefit from any general improvements to the rate of pay or other terms and conditions which may have been introduced while they were away.

If there is some reason why it is not reasonably practicable for the employee to return to the same job, they should be offered a suitable alternative on terms and conditions which are no less favourable than their original job. (This does not apply if the employee works for an employer who (together with any associated employer) employed fewer than five employees immediately before the end of the additional adoption leave period.)
Paternity leave

At the end of paternity leave an employee is 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.

They are also entitled to benefit from any general improvements to the rate of pay or other terms and conditions introduced while they were away.

If an employee is not given their job back at the end of paternity leave, they may make a complaint of unfair dismissal to an employment tribunal (see Section 8).

When paternity leave is immediately preceded by two or more periods of statutory leave which did not include any period of additional maternity leave or additional adoption leave or parental leave of more than 4 weeks the employee is entitled to return to the job in which they were employed before their absence.

What should an employee do if they don’t want to return to work at the end of their adoption leave?

If an employee does not wish to return to work after their ordinary or additional adoption leave they should give their employer notice in the usual way. If their contract of employment specifies a period of notice they should give that amount of notice. If the contract does not specify a period of notice they should give the required statutory notice. Further information about giving notice can be found in the booklet Rights to notice and reasons for dismissal (PL 707).
What should an employee do if they are ill at the end of their adoption or paternity leave?

If an employee can’t go back to work at the end of their adoption or paternity leave because of illness, they should follow the normal procedures for sickness absence for their job, such as notifying their employer.
Employees are protected from suffering a detriment or dismissal for taking, or seeking to take, adoption or paternity leave. Employees who believe they have been treated unfairly for these reasons can complain to an employment tribunal (see Section 8) regardless of their length of service. Employees who are not given their job back at the end of paternity leave or ordinary adoption leave are entitled to make a complaint of unfair dismissal, regardless of their length of service.

What protection is there against detriment for taking adoption or paternity leave?

An employee is protected against being subjected to detriment by any act or deliberate failure to act by their employer because they:

• took or sought to take adoption or paternity leave; or

• the employer believed that they were likely to take adoption leave; or

• the employee failed to return after a period of additional adoption leave; and

  - their employer failed to give them appropriate notice of their return date and they reasonably believed that the period had not ended; or

  - their employer gave them less than 28 days’ notice of the date on which their adoption leave would end, and it was not reasonably practicable for them to return on that date.

Detriment can cover a wide range of forms of unfair treatment, such as denial of promotion, facilities or training opportunities which the employer would otherwise have offered or made available.

Employees who suffer unfair treatment at work for the above reasons may make a complaint to an employment tribunal (see section 8).
In what circumstances is an employee protected from dismissal under these rights?

Dismissal means the termination of employment by the employer, with or without notice. It could also include constructive dismissal, where the employee has resigned because the employer has made a substantial breach of the contract of employment indicating that they intend no longer to be bound by it. Or, it could include the expiry of a fixed-term contract without its renewal or the end of a task contract that expires when a specific task has been completed or a specific event does or does not happen. The booklet *Unfairly dismissed? (PL 712)* sets out the meaning of dismissal more fully.

It is unlawful for an employer to dismiss an employee because:

- they took or sought to take adoption or paternity leave; *or*
- their employer believes that they are likely to take adoption leave *or*
- the employee failed to return after a period of additional adoption leave; and
  - their employer failed to give them appropriate notice of their return date and they reasonably believed that the period had not ended; *or*
  - their employer gave them less than 28 days notice of the date on which their adoption leave would end, and it was not reasonably practicable for them to return on that date.

This protection against dismissal also applies if an employee is selected for redundancy on these grounds.
What is the right to a written statement of reasons for dismissal?

An employee who is dismissed for any reason has a right, normally subject to a qualifying period of one year, to a written statement of the reasons for their dismissal if they request it. An employee dismissed during adoption leave is entitled to a written statement of the reasons for their dismissal without having to request it and regardless of their length of service.

What happens if a redundancy situation arises when an employee is on adoption or paternity leave?

Adoption leave

If a redundancy situation arises during an employee’s ordinary or additional adoption leave which makes it impractical for their employer to continue to employ them under their original contract, the employee is entitled to be offered a suitable alternative vacancy where there is one. The offer should be made before the original contract ends and the new contract must take effect immediately when the original contract does end.

If the employer fails to offer a suitable alternative vacancy and there is one, the redundancy will be regarded as unfair dismissal. If the employee unreasonably turns down a suitable alternative vacancy, they may give up their right to a redundancy payment.

An employee may make a complaint about redundancy during adoption leave to an employment tribunal (see Section 8).

Paternity leave

An employee taking paternity leave should be treated in the same way as any other employee when a redundancy situation arises. This includes treatment relating to consultation about the redundancy and consideration for any other job vacancies. The booklet *Redundancy consultation and notification* (PL 833) gives general information about statutory redundancy rights.
Section 8: Enforcement through employment tribunals

What should an employer or employee do if they disagree about entitlement to adoption or paternity leave?

They should first seek to resolve the matter by mutual agreement – perhaps through the business’s own grievance or appeals procedure, where one exists. 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.

Under what circumstances can an employee complain to an employment tribunal?

If the matter cannot be settled between employer and employee, the employee may want to bring a case to an employment tribunal if they have grounds for doing so. They will have grounds for making a complaint to an employment tribunal if the employer:

• prevents, or attempts to prevent, the employee taking adoption or paternity leave;

• subjects the employee to detriment in connection with adoption or paternity leave (see Section 7); and

• dismisses the employee (or unfairly selects them for redundancy) for reasons connected with adoption or paternity leave (see Section 7).

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

The complaint should normally be made within three months of the refusal to allow the employee to take adoption or paternity leave, or of the detriment or dismissal. Where the detriment suffered is due to the employer’s failure to act or provide a benefit, the complaint should be made within three months of the failure to act.

An extension to the time limit can be granted only in exceptional circumstances, where the employment tribunal is satisfied that it were not reasonably practicable for the complaint to have been made any earlier.

An employee who wishes to make a complaint to an employment tribunal should obtain a copy of the explanatory leaflet How to apply to an employment tribunal which contains a copy of the application form IT1 (or IT1 (Scot) in Scotland). The leaflet explains the procedure and gives the address of the employment tribunal office to which the completed form should be sent. The booklet is available from Jobcentre Plus/Social Security offices, Citizens Advice Bureaux or from the DTI Publications Orderline on 0870 1502 500, or from the Employment Tribunals Service website (www.ets.gov.uk).

When the employment tribunal office receives the completed form, it will send a copy to a conciliator at Acas who will try to help the two sides to reach a settlement of the complaint.

If conciliation is not possible or fails, the employment tribunal will hear the case, and both parties should attend the hearing. They may claim travelling expenses and other expenses within certain limits. Employment tribunal hearings are conducted informally and in a way which makes it easy for the parties to present their own case if they wish to do so. However, if either party want to be represented – whether by a lawyer or by someone else such as a trade union, an employer association, a relative or a friend – this is permitted.
What remedies does the employment tribunal have?

Where an employee complains that they have been refused adoption or paternity leave, or prevented from taking adoption or paternity leave, and the tribunal finds the complaint well-founded, it will make a declaration to that effect and may order the payment of compensation.

Where an employee complains that they have been subjected to a detriment and the tribunal finds the complaint well-founded, it can make a declaration to that effect and may order the payment of compensation. There is no limit on awards in cases of detriment. It is for the tribunal to decide the appropriate award, taking account of the loss suffered by the applicant.

Where a tribunal finds that the employee was unfairly dismissed or selected for redundancy, it will order re-instatement or re-employment, or the payment of compensation. For further details of remedies in cases of unfair dismissal, see Unfairly dismissed? (PL 712) and Dismissal – fair and unfair: a guide for employers (PL 714). The booklet Limits on payments (PL 827) sets out the financial limits payable on compensation awards for unfair dismissal.
Section 9: Other support and time off rights for adopters

NOTE: Employees should first check with their employer to see if they are entitled under their contract to take paid time off when they are adopting.

What financial benefits may employees be entitled to when they adopt a child other than SAP or SPP?

Employees should first contact their adoption agency. The local authority responsible for overseeing the adoption has an obligation to make an assessment of the financial support they may need.

In addition they may be able to claim some of the following benefits:

**Income support** may be payable to people who have a low income (including some of those on Statutory Adoption Pay or Statutory Paternity Pay) or no income at all. There are qualifying conditions which all claimants must meet in order to receive it: for example, savings should not exceed £8,000 and the employee’s partner should not be working. *A guide to Income Support IS20* gives further information and is available from the local Jobcentre Plus/Social Security Office.

**Housing and Council Tax Benefit** are income related benefits designed to help meet the costs of rent and council tax. If an employee is on Income Support or on a low income and is liable to pay either rent or council tax, then they may already be receiving these benefits. If an employee’s income is stopped or reduced during paternity or adoption leave, or the employee receives Income Support, they may be entitled to Housing and Council Tax Benefit. If an employee already receives these benefits, they may be entitled to an increase in the benefit. Further advice or leaflet RR2 on Housing and Council Tax Benefit can be obtained from a local authority.
Child Tax Credit and Working Tax Credit are two tax credits administered by the Inland Revenue and payable from 6 April 2003. They replace, among other things, the Children’s Tax Credit, Working Families’ Tax Credit and Disabled Person’s Tax Credit.

Both tax credits are based on household income. Child Tax Credit is a way to claim money for children whether or not the claimant is in work.

Working Tax Credit supports working households on low incomes by topping up earnings. It includes support for the cost of qualifying childcare. Depending on household income, a worker may be entitled to Working Tax Credit if they normally work at least 16 hours a week, provided they are responsible for a child or have a disability. If the worker does not have a child or a disability, they must be aged at least 25 and work 30 or more hours a week to qualify.

People receiving Statutory Paternity Pay or Statutory Adoption Pay are treated as being in work for Working Tax Credit purposes as long as they were working the necessary number of hours (16 or 30, as the case may be) immediately before they started receiving these payments.

For more information about Child Tax Credit or Working Tax Credit, or to obtain the claim forms, phone the Tax Credits Helpline on 0845 300 3900 (England, Scotland and Wales) or 0845 603 2000 (Northern Ireland). People with speech or hearing problems using a textphone can dial 0845 300 3909 (England, Scotland and Wales) or 0845 607 6078 (Northern Ireland).

Adopting employees may also be eligible for a Sure Start Maternity Grant. A guide to maternity benefits NI17A gives further information on these benefits and is available from Jobcentre Plus/Social Security offices or www.dwp.gov.uk/advisers/index.htm#guides.
What time off rights do employees have apart from adoption leave and paternity leave when a child is placed for adoption with them?

The right to time off for dependants gives all employees the right to take a reasonable amount of time off work to deal with an emergency involving a dependant, and not to be dismissed or victimised for doing so. The booklet Time off for dependants (URN 99/1186) provides more detail on this right.

The right to parental leave gives employees – both mothers and fathers – who have completed one year’s continuous service with their employer the right to up to thirteen weeks’ unpaid parental leave to care for their child. Adoptive parents can take their leave up to the fifth anniversary of the child’s placement for adoption, or up to the child’s 18th birthday if that is sooner. Parents of disabled children can take up to eighteen weeks’ parental leave up to the child’s 18th birthday. Further information is available in Parental leave (PL 509).

The right to request flexible working gives eligible employees who are parents of children aged under six or of disabled children aged under eighteen the right to apply to work flexibly. Their employers must take such requests seriously. The booklet Flexible working – the right to request and the duty to consider: a guide for employers and employers (PL 520) gives further information.
Section 10: Where to find further information

**Acas (the Advisory Conciliation and Arbitration Service):**

**National Helpline number:** 08457 47 47 47

**Arbitration section:** 020 7210 3742

**Website** – www.acas.org.uk

**ACAS main offices**

**London**  
22/23 Floors, Euston Tower, Euston Road, London NW1 3JJ

**East of England**  
Ross House, Kempson Way, Suffolk Business Park, Bury St Edmunds,  
Suffolk IP32 7AR

**East Midlands**  
Lancaster House, 10 Sherwood Rise, Nottingham NG7 6JE

**West Midlands**  
Warwick House, 6 Highfield Road, Edgbaston, Birmingham B15 3ED

**North West**  
Commercial Union House, 2-10 Albert Square, Manchester M60 8AD  
Pavilion 1, The Matchworks, Speke Road, Speke, Liverpool L19 2PH

**North East**  
Cross House, Westgate Road, Newcastle upon Tyne NE1 4XX

**Scotland**  
151 West George Street, Glasgow, G2 2JJ

**South West**  
Regent House, 27a Regent Street, Clifton, Bristol, BS8 4HR
South East
Suites 3-5, Business Centre, 1-7 Commercial Road, Paddock Wood, Kent TN12 6EN
Westminster House, Fleet Road, Fleet, Hants GU51 3QL

Wales
3 Purbeck House, Lambourne Crescent, Llanishen, Cardiff CF14 5GJ

Yorkshire and Humberside
Commerce House, St Alban’s Place, Leeds LS2 8HH

Acas Publications
Advisory handbooks
Employing people: a handbook for small firms
Discipline and Grievances at work
The A-Z of Work

Advisory booklets
Job evaluation: an introduction
Employee appraisal
Pay systems
Redundancy handling
Personnel data and record keeping
Changing patterns of work
Absence and labour turnover
Appraisal-related pay
Recruitment and induction
Health and employment
Employee communications and consultation
Effective organisations: the people factor
Supervision
Teamwork success through people
Representation at work
For details of how to order and prices, please contact:

ACAS Publications, PO Box 235, Hayes, Middlesex, UB3 1HF; telephone: 0870 242 9090; fax: 020 8867 3225; email: acas@eclogistics.co.uk

**Department of Health**
Adoption, Permanence and Children’s Trusts Team
Wellington House
133-155 Waterloo Road
London
SE1 4UG
**e-mail:** dhmail@doh.gsi.gov.uk
**website:** www.doh.gov.uk/adoption

**The Inland Revenue (for more information on Statutory Paternity Pay and Statutory Adoption Pay):**
**website:** www.inlandrevenue.gov.uk/employers

You can contact them on 0845 7 143 143 (textphone 0845 602 1380) or contact your local Inland Revenue office

To find out about their network of Business Support Teams who offer workshops and one-to-one visits to employers you can call 0845 60 70 143 or find details at

www.inlandrevenue.gov.uk/bst/index.htm

**Department for Work and Pensions (for more information on benefits available to families)**
**Website:** www.dwp.gov.uk
**The Department of Trade and Industry (for more information on employment rights):**

**Website:** www.dti.gov.uk

Interactive guidance on employment rights (including employer and employee guidance on paternity and adoption rights) at www.tiger.gov.uk

**Other useful organisations**

Equality Direct (for queries from employers on equality issues in England)
Tel: 0845 600 3444

**Equal Opportunities Commission (EOC) (for queries from employees on sex discrimination legislation)**
Arndale House, Arndale Centre, Manchester M4 3EQ
EOC helpline: 08456 015901

**EOC (Scotland)**
St Stephens House, 279 Bath Street, Glasgow G2 4JL
EOC helpline: 08456 015901

**EOC (Wales)**
Windsor House, Windsor Lane, Cardiff CF10 3GE
Tel: 029 20343552

**Commission for Racial Equality**
St Dunstan’s House
201-211 Borough High Street
London SE1 1G7
Tel: 020 7939 0000

**Disability Rights Commission**
Freepost MID 02164, Stratford-upon-Avon, CV37 9BR
Tel: 08457 622 633
Tax Credits helpline
Tel: 0845 300 3900
Textphone: 0845 300 3909

Adoption UK
Tel: 0870 7700 450
Website: www.adoptionuk.org.uk

Adoption and Fostering Information Line
Tel: 0800 783 4086
Website: www.adoption.org.uk

Adoption-net.co.uk
Tel: 0116 227 3123
Website: www.adoption-net.co.uk

British Agencies for Adoption and Fostering – BAAF
Tel: 0207 593 2000
www.baaf.org.uk

Childcare Link (freephone helpline for childcare information)
Tel: 08000 96 02 96
website – www.childcarelink.gov.uk

Family Rights Group
Provides help for families involved with the social services
Tel: 020 7923 2628
The Print House, 18 Ashwin Street,
London E8 3DL
Website: www.frg.org.uk
Parentline
(Confidential free phone helpline run by Parentline Plus, providing support to families)
Tel: 0808 800 2222
Website: www.parentlineplus.org.uk

Parents at work
Tel: 020 7628 35 65
Website: www.parentlineplus.org.uk

Community Legal Service
Tel: 0845 608 1122

Low Pay Units:
Scottish: 0141 221 4491
West Midlands: 0121 643 3972
Yorks and Humberside: 01924 443 850

Employment Tribunals Service enquiry line
(Advice on employment tribunals procedures)
Tel: 0845 795 9775
Department of Trade and Industry employment legislation publications

The following booklets on employment and trade union legislation can be obtained free of charge from Jobcentre Plus offices. They are also available by post from the DTI Publications Orderline (tel: 0870 1502 500, fax: 0870 1502 333, email: publications@dti.gov.uk).

- PL 865 – Unjustifiable discipline by a trade union
- PL 866 – Trade union executive elections
- PL 871 – Union membership: rights of members and non-members
- PL 867 – Trade union funds and accounting records
- PL 868 – Trade union political funds
- PL 944 – The payment of trade union subscriptions through the check-off: a guide for employers, trade unions and their members
- PL 869 – Industrial action and the law: a guide for employees, trade union members and others
- PL 870 – Industrial action and the law: a guide for employers, their customers and suppliers, and others
- PL 943 – Industrial action and the law: citizen’s right to prevent disruption
- PL 962 – Statutory Code of Practice: Industrial action ballots and notice to employers
- PL 928 – Statutory Code of Practice: Picketing
- PL 500 – Statutory Code of Practice: Access to workers during recognition and derecognition ballots
- PL 712 – Unfairly dismissed?
- PL 707 – Rights to notice and reasons for dismissal
- PL 958 – Maternity rights: a guide for employers and employees
- PL 714 – Dismissal – fair and unfair: a guide for employers
- PL 716 – Individual rights of employees: a guide for employers and employees
PL 699 – Transfers of undertakings: a guide to the regulations
PL 700 – Written statement of employment particulars
PL 702 – Time off for public duties
PL 704 – Pay statements: what they must itemise
PL 724 – Guarantee payments
PL 718 – Your rights if your employer is insolvent
PL 705 – Suspension from work on medical or maternity grounds under health and safety regulations
PL 720 – Benefit repayment: a guide for employers
PL 711 – Continuous employment and a week’s pay

– How to apply to an employment tribunal
– What to do if taken to an employment tribunal
– Hearings at employment tribunals

PL 808 – Redundancy entitlement
PL 810 – Contracts of employment
PL 827 – Limits on payments
PL 833 – Redundancy consultation and notification
PL 960 – Sunday shop and betting work: employees’ rights

– Time off for dependants: a guide for employers and employees

PL 506 – Family emergency? Your right to time off
PL 509 – Parental leave: a guide for employer and employees
PL 510 – Parental leave: a short guide
PL 513 – Fixed-term work: short compliance guide
PL 514 – Paternity: leave and pay – a basic summary
PL 515 – Adoptive parents: rights to leave and pay – a basic summary
PL 516 – Flexible working: the right to apply – a basic summary
Appendix 1: Matching certificate

Matching Certificate:
Statutory Adoption Leave and Pay

This certificate when completed by the appropriate adoption agency, may be used as evidence for the purposes of Statutory Adoption Leave and Pay. It confirms that the named person(s) has been matched with a child for adoption.

<table>
<thead>
<tr>
<th>A. Name and address of adoptive parent(s):</th>
</tr>
</thead>
</table>

I confirm that the person(s) named above has been matched by this agency with a child for adoption and,

they were notified of this on: 

It is expected that the child will be placed with them on: 

The child has already been placed with them, this occurred on: 

<table>
<thead>
<tr>
<th>B. Agency name and address:</th>
</tr>
</thead>
</table>

Agency stamp

This is an adoption agency within the meaning of the Adoption Act 1976 or the Adoption (Scotland) Act 1978.

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Signature</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Notes for adoptive parents: Statutory Adoption Leave and Pay

This certificate can be used as evidence for the purposes of Statutory Adoption Leave and Pay. It confirms that you have been matched with a child for adoption by an adoption agency.

Statutory Adoption Leave and Pay

If you are matched with a child (whether from the UK or overseas) by an adoption agency, you may be entitled to:

- Statutory Adoption Pay (SAP) – at least part of your wages will be paid for 26 weeks. You will get £100 a week or 90% of your average weekly earnings if this is less than £100.
- Adoption Leave – time off work of up to 52 weeks (26 weeks ordinary adoption leave plus 26 weeks additional adoption leave).
- If you are adopting the child jointly with your partner, you must have chosen to take adoption leave and pay. Your partner, or the partner of an individual adopting, may be eligible for Statutory Paternity Leave and Pay. Depending on your circumstances, you may not qualify for adoption leave and pay. Your employer will let you know. If this is the case, you will get more advice and information at the time.

You can find more information on Statutory Adoption and Paternity Leave and Pay from:

- The DTI booklet, *Adoptive Parents — rights to leave and pay — a guide for employers and employees*, available from DTI publications ordeline on 0870 1502 500.
- www.tiger.gov.uk
- www.inlandrevenue.gov.uk/employer

Other help

Booklet BC1, *Babies and Children*, is a basic guide to benefits and tax credits for anyone expecting a baby or caring for children and is available from your local jobcentre plus or social security office.

Terms and conditions

In these notes, we haven’t covered all of the law that relates to Statutory Adoption Leave and Pay. If you are in any doubt about your entitlement, in the first instance talk to your employer.

You must:

- Be matched with a child for the purposes of adoption by an adoption agency.
- Have worked continuously for your employer for 26 weeks, up to and including the week the adoption agency told you that you were matched with the child.

You must give your employer:

- 28 days notice of when you expect your SAP to start, or if that is not reasonably practicable, as soon as is reasonably practicable.
- Notice for adoption leave within 7 days of the adoption agency telling you that you have been matched with your child, saying when you expect your leave to start.

If this is not possible, please discuss the situation with your employer.

Disagreements

If you are unable to resolve any disagreement or you need further advice about:

- SAP – contact your Inland Revenue office, you will find the number in the Phone Book.
- Adoption Leave – contact ACAS, you will find the number in the Phone Book.
Appendix 2: SC4 Becoming an adoptive parent

Statutory Paternity Pay/ Paternity Leave

Becoming an adoptive parent

If you want to take time off work to support your partner who is adopting a child you may be entitled to:

- Statutory Paternity Pay (SPP) - at least part of your wages will be paid for two weeks. You will get £100 or 90% of your average weekly earnings, whichever is less.
- Paternity leave - up to two weeks time off.

Depending on your circumstances you may not qualify for SPP and/or paternity leave. Your employer will let you know. If this is the case you will get more advice and information at the time.

If you need help with this form please contact any Inland Revenue office. You will find the number in the phone book.

Please read through the terms and conditions on page 2 and if you think you might qualify, then
- fill in page 3.
- give the completed statement to your employer.

Other help

The DTI publication Adoptive Parents - rights to leave and pay - a guide for employers and employees gives information on these rights, and details of other booklets covering employment protection and related equal opportunities legislation. Available from

- DTI publications on 0870 1502 500, or
- go to www.dti.gov.uk/er

Go to www.dwp.gov.uk for details of social security benefits.

You can also contact
- any Inland Revenue office
- any Arbitration and Conciliation Advisory Service (ACAS) office (see www.acas.org.uk for details)
- www.tiger.gov.uk

Information on all aspects of employment legislation is also usually available from citizens advice bureaux, low pay units, trade unions and other bodies.

If you are not entitled to SPP you should contact your adoption agency to find out if you can get any other help.
Terms and conditions

On this form we haven’t covered all of the law that relates to Statutory Paternity Pay (SPP) and leave. So if you are in any doubt about your entitlement talk to your employer or contact any Inland Revenue office.

SPP and paternity leave are available to any employee (male or female) who is

- the partner of someone adopting a child on their own, or
- adopting a child with their partner.

It is not normally available to foster parents or step-parents who go on to adopt the child, or their partners.

You must be able to declare that

- you are
  - married to the person adopting the child, or
  - living with the person adopting the child in an enduring family relationship, but are not an immediate relative, and
- you will be responsible for the child’s upbringing, and
- you will take time off work to support the person adopting the child or to care for the child.

If you and your partner are adopting a child together you must also declare that you have chosen not to receive Statutory Adoption Pay.

You must be continuously employed

- for 26 weeks up to and including the week the person adopting the child is told by the adoption agency that they have been matched with the child, and
- from the week the person adopting the child is told by the adoption agency that they have been matched with the child until the child is placed with them.

To get SPP you must also have average earnings over a set period above a set amount - your employer will work this out for you.

You can choose to take one or two whole weeks leave any time up to eight weeks after the date the child is placed with the person adopting them. You cannot take odd days off work, but the weeks can start on any day, for example from Tuesday to Monday.

Disagreements

If your employer tells you that you are not entitled to SPP and/or paternity leave you can challenge that decision. If you need help with this, for

- SPP - contact your Inland Revenue office.
- Paternity leave - contact ACAS, your will find the number in the phone book.
Your dates for pay and leave

<table>
<thead>
<tr>
<th>Information</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>The adoption agency told the person adopting the child that they had been matched with the child on</td>
<td>/ / /</td>
</tr>
<tr>
<td>The child is expected to be placed on</td>
<td>/ / /</td>
</tr>
<tr>
<td>And, if the child has been placed, please enter the date they were placed</td>
<td>/ / /</td>
</tr>
<tr>
<td>I would like my SPP and/or paternity leave to start on</td>
<td>/ / /</td>
</tr>
<tr>
<td>I want to be away from work for one/two* weeks (*delete as appropriate)</td>
<td></td>
</tr>
</tbody>
</table>

Your declaration

<table>
<thead>
<tr>
<th>Field</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Surname</td>
<td></td>
</tr>
<tr>
<td>First name(s)</td>
<td></td>
</tr>
<tr>
<td>National Insurance number</td>
<td></td>
</tr>
</tbody>
</table>

You must tick this box if you are adopting a child with your partner.

I declare that I am adopting the child with my partner and I want to receive Statutory Paternity Pay and paternity leave not Statutory Adoption Pay and adoption leave.  

You must be able to tick all three boxes below to get Statutory Paternity Pay and paternity leave.

I declare that

- I am
  - married to the person adopting the child, or
  - living with the person adopting the child in an enduring family relationship, but am not an immediate relative, and

- I will have responsibility for the child’s upbringing

- I will take time off work to support the person adopting the child or to care for the child.

Signature

Date | / / / |
Appendix 3: Model letter for employers to acknowledge notification of adoption leave

This letter should be used when only the statutory levels of leave and pay are provided.

The employer must respond within 28 days of receipt of employees’ notification.

<table>
<thead>
<tr>
<th>Date:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dear [name of employee],</td>
</tr>
<tr>
<td>Congratulations and thank you for telling me that you will be adopting a child. I am writing to you about your adoption leave and pay.</td>
</tr>
<tr>
<td>As we have discussed, you are eligible for 52 weeks’ adoption leave/you are not eligible for adoption leave [delete as appropriate].</td>
</tr>
<tr>
<td>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 the correct notice, if at all possible. Please contact me if you wish to discuss this.</td>
</tr>
<tr>
<td>If you decide to return to work before [insert date leave ends], you must give me at least 28 day’s notice.</td>
</tr>
<tr>
<td>As we discussed, you are eligible for 26 weeks’ Statutory Adoption Pay/not eligible for Statutory Adoption Pay [delete as appropriate].</td>
</tr>
<tr>
<td>Your adoption pay will be £[insert amount] from [insert date] to [insert date].</td>
</tr>
</tbody>
</table>
**OR**

The SAP1 form (enclosed) explains why you do not qualify for Statutory Adoption Pay. You should contact your adoption agency to find out if you can get any help.

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. I wish you well.

Yours sincerely,