

# HR & OD POLICIES

human resources and organisational development



## Family Leave- Surrogacy Guidelines

Guidelines for Teachers and  
Associated Professionals

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## 1. INTRODUCTION

The following procedure indicates the leave and pay available to employees in relation to having a child via a surrogate. The SNCT has agreed that leave should be provided in cases of surrogacy and will be treated in accordance with the Family Leave provisions set out in [Part 2, Section 7 of the SNCT Handbook](#).

Parents who receive a child following a surrogacy arrangement apply to the Sheriff Court for a Parental Order. The application can only be made after the child is six weeks old and before the child is six months old.

A copy of the Parental Order should be provided to the Council to confirm Parenthood. The Council recognises that the leave may have commenced before this event.

## 2. SURROGACY LEAVE ENTITLEMENT

An employee is entitled to 52 weeks of Family Leave regardless of length of service. The Family Leave may begin:

- From the date of the child's placement; or
- From a fixed date up to 14 days before the expected date of placement.

The couple must choose one person to take the family leave.

## 3. SURROGACY PAY ENTITLEMENT

Entitlement to pay for this category of Family Leave depends on your length of service and whether average weekly earnings are not less than the lower earnings limit for National Insurance contributions.

### **Entitlements for Employees with More than 26 Weeks' Continuous Service**

An employee who has 26 weeks' continuous service prior to the week in which she/he receives the child will be entitled to be paid:

- 13 weeks at normal salary and 26 weeks at a sum equivalent to Statutory Adoption Pay.

Other than for 'Keeping in Touch Days', when an employee returns to work before the full family leave period then her/his entitlement to any balance of leave and pay

(normal salary and/or equivalent to Statutory Adoption Pay) ceases. The employee will receive her/his normal salary from the date of her/his return to work.

Any previous employment (including probationary periods) with councils, employers listed in the Redundancy Payment (Local Government) (Modification) Order 1990 (as amended) and any other employment deemed by the council to be relevant, should be counted as continuous service (as defined in the Employment Rights Act 1996) subject to a gap in employment not exceeding one working week.

### **Entitlements for Employees with Less than 26 Weeks' Continuous Service**

An employee, who has less than 26 weeks' continuous contractual service, prior to the week in which she/he receives the child is entitled to 52 weeks' family leave without pay.

## **4. APPLYING FOR SURROGACY LEAVE**

To qualify for family leave and pay an employee must notify the Council in writing of:

- The fact that they are the Intended Parent
- The expected week of childbirth
- The date of the child's placement
- The date of up to 14 days before the expected date of placement

You should complete the [Notification of Surrogacy SUR 1 TEACH](#) and submit it to HR Support.

The intended parent should provide the Council with a copy of the MAT B1 which the birth mother obtains from their GP or midwife at around 26 weeks before the baby is due. This will provide the Council with notice of the impending birth and date the family leave is to commence.

The form [Application for Surrogacy Leave \(Teachers\) SUR2 TEACH](#) should be completed and a copy of the MAT B1 attached and submitted to HR Support

Notice to take family leave should be no less than 28 days' written notice.

## **Parental Order**

Once the child is with the Intended Parent (s) a Parental Order can then be applied for through the Sheriff Court. The application can only be made after the child is six weeks old and before the child is six months old. A copy of the Parental Order should

be sent to the Council to confirm Parenthood using the form [Confirmation of Parenthood \(TEACHERS\) SUR 3 TEACH.](#)

## Termination of Surrogacy Arrangement

Where the surrogacy arrangement ends, for any reason, during the family leave, the employee will notify the council. Where the surrogacy arrangement ends within the first 26 weeks of family leave the employee will be entitled to remain absent from work until the end of the 26 week period. Where the surrogacy arrangement ends after the 26<sup>th</sup> week of the family leave the employee will be entitled to remain absent on family leave for up to 8 weeks after the end of the placement or until the end of the family leave period, whichever is sooner. Notification of the intended date of return should be given in accordance the return to work procedure.

## 5. CONTACT

Prior to the commencement of family leave a meeting should be arranged to discuss how contact can be maintained with you and your line manager. Both the employer and employee should have a clear understanding of the nature and frequency of contact.

Communication may be facilitated by home computers where employees on leave can exchange e-mails with colleagues at work and access council's intranets. If you have no home access to e-mails then communication by telephone or letter should be agreed.

Employers have a responsibility to ensure employees on family leave have information on vacancies and promotion, including acting appointments, and in-service or other CPD opportunities. The employee should also be apprised of changes to the workplace or work organisation which may impact on her.

## Keeping in Touch Days

Keeping in Touch Days are formal arrangements to allow employees to undertake work of some kind during family leave. An employee cannot be required to take up Keeping in Touch days – participation is not compulsory.

The statutory provision allows for up to ten Keeping in Touch Days in any period of family leave. The number of days and the activity to be undertaken must be agreed between the employer and employee, taking account of the wishes of both parties. It is noted that if the employee works for part of a day that will count as a Keeping in Touch Day.

The purpose of Keeping in Touch Days is to keep the employee informed on what is happening in the workplace. While a Keeping in Touch Day could simply be used for the person to undertake normal contractual duties on that day DTI guidance stresses

that Keeping in Touch Days could be particularly useful in enabling an employee to attend a conference, undertake a training activity or attend a team meeting.

Please see the following examples of how Keeping in Touch Days can be used:

- Attending INSET days, as set out in the school calendar
- Team teaching with the teacher covering the leave, particularly in the weeks preceding the date of return
- Attending CPD events, including participating in annual review discussions
- Attending team or departmental meetings
- Work shadowing a colleague or liaison with a colleague.

Where the employee on family leave holds a promoted post the employee should not resume those duties for Keeping in Touch Days or break the contract of the employee who had taken the post of temporary responsibility.

This would not preclude a Keeping in Touch Day to be used for work shadowing or liaison, as set out above.

The Regulations make it clear that an employer and employee are allowed to make reasonable contact during family leave to discuss such issues as the return to work.

This would not constitute 'work' and would not therefore count towards the ten days.

Normal contractual pay will be paid for keeping in touch days. If you are in receipt of this when you undertake a Keeping in Touch day, the additional payment is only the difference between the hours claimed and your SAP. For more information please refer to the [Keeping in Touch Days Factsheet](#).

Where a teacher is in attendance for the whole of a school day, payment will be in accordance with SNCT/26 (1/235 and 0.2051 for holiday pay). Where the period worked is less than a full day, the teacher shall be paid an hourly rate (calculated on the basis of 1/6435 of the annual rate of salary) with pro rata holiday entitlement.

The agreement on Keeping in Touch Days should normally be recorded on an individual basis. It is acknowledged that circumstances may well change and it must be open to both parties to review arrangements.

It is expected that Keeping in Touch Days will be subject to amicable agreement. However, if resolution cannot be achieved through informal discussion then formal grievance procedures may have to be invoked by employees who are unable to obtain an agreement on Keeping in Touch Days.

Payroll must be informed of any keeping in touch days worked on a yellow S56 time sheet will be provided by your line manager, which should be submitted when the days occur, or monthly or by any other agreement.

## 6. GENERAL INFORMATION

### Antenatal Appointments (Time off to Accompany)

From 1 October 2014 under section 57ZE of the ERA a person is eligible to take unpaid time off to accompany someone to an ante natal appointment if they have a qualifying relationship with the pregnant woman of the expected child.

The right is to unpaid time off of up to six and a half hours on no more than 2 occasions.

The following criteria (qualifying relationship) applies in the case of Surrogacy:

- A potential applicant for a parental order under section 54 of HFEA in respect of the expected child.

In order to qualify for this unpaid leave the employee must provide the following to their line manager

A signed declaration which states

- The employee has a qualifying relationship with a pregnant woman or her expected child and the purpose of taking time off is to accompany a woman to an ante-natal appointment
- The date and time of the appointment
- The unpaid leave should be recorded on the [Unpaid Leave Form](#) and forwarded to the payroll section.

### Pensions

The employer shall continue to make full pension contributions during the period of paid family leave.

### Annual Leave

Annual leave shall accrue during the period of family leave in accordance with [SNCT Handbook Part 7 paragraphs 7.43 to 7.51](#)



Family leave shall either fall within one leave year or span two leave years. Statutory leave must be provided by the council and must be taken by the employee for each leave year spanned by the period of family leave.

An employee on family leave which spans two leave years shall receive at the end of the first leave year a statement which notifies: the leave taken to the commencement of the surrogacy period and the leave accrued during the family leave period in that leave year (contractual entitlement minus leave taken). The balance will be carried forward into the next leave year.

When an employee has notified the council of the intended date of return, the council will issue a statement of the employee's annual leave entitlement effective at that date, including any balance of statutory leave which will require to be taken.

On return from family leave the employee shall take any remaining statutory leave in that leave year. Where it is not practicable to take that leave in full or in part any balance will be carried forward into the next leave year but must be taken as leave. The timing of this leave shall take account of the needs of the service and:

- In the case of teachers and music instructors, should normally be taken in the term in which the return to work takes place, or within the following term; or
- In the case of education support officers, quality improvement officers and educational psychologists, the leave should normally be taken as soon as possible following the return to work.

The balance of annual leave in excess of statutory leave accrued during a period of family leave shall be taken at the end of the family leave period, following the employee's return to work. The timing of this leave is subject to the overriding needs of the service and:

- In the case of teachers and music instructors, the accrued leave can be directed to be taken during the days of school closure, with payment to be arranged based on the teacher's current daily rate of pay. Any remaining leave is to be taken in the term in which the return to work takes place, or within the following term; or
- In the case of education support officers, quality improvement officers and educational psychologists should normally be taken as soon as possible following the return to work.

Where an employee gives written notice to the council that she/he does not intend to return to work at the end of the family leave period, the council will make a payment in lieu of leave accrued during the surrogacy leave period.

Annual leave days are set as follows:

October Vacation	First 7 days
December Vacation	First 7 days
April Vacation	First 6 days
Summer Vacation	First 20 days

The remaining days are defined as school closure.

## Continuous Service

All periods of surrogacy and paternity leave count towards continuous service.

## Pay Awards and Incremental Progression

Periods of surrogacy leave count in full as credited service in the determination of placement on the Main Grade Salary Scale in accordance with the salary placement regulations.

As you may be aware, each April you pay a registration fee to the GTC that is deducted automatically from your salary. Should April fall within your unpaid family leave period then this deduction cannot be made from your salary. It is your responsibility therefore to ensure that your registration fee is paid immediately. The GTC will send you an account, which you can settle direct with them. Should you wish to contact the GTC their telephone number is 0131 314 6000.

## Changes to the Pay Rates

As the rate payable to employees (if applicable) is a sum equivalent to Statutory Adoption Pay then the following will apply.

The lower rate is reviewed each April. If payment of the sum equivalent to Statutory Adoption Leave starts before and continues after the lower rate is changed, you will receive the new rate from the start of the week in which the change occurs.

## Income Tax and National Insurance Contributions

Income tax and national insurance contributions will be deducted from your surrogacy pay as appropriate.

## Essential Car User/Telephone Allowance

If you are currently in receipt of an essential car user allowance or telephone allowance, you will accrue your full entitlement for the full 52 weeks of your surrogacy leave regardless of whether you will be returning to work or not.

## More than One Job

If you have more than one job with the Council and if each job has a different payroll (employee) reference number then each job is calculated separately with regard to your average earnings. If they are on the same pay/ employee reference number then your pay for both jobs will be totalled. For all other entitlements and notification requirements each job will be treated separately.

## Fixed Term Appointments

Teachers on fixed term contracts will be treated the same as permanent teachers with regards to their entitlement to family leave and pay.

Fixed term contracts should not be ended due to family leave. If a fixed term contract is due to be extended, this should be offered regardless of the family leave. If however, the contract end date falls within the period of family leave and it is not due to be extended, teachers will not be required to return to work. If a teacher on a fixed term contract is still receiving surrogacy pay when their contract ends they will remain on payroll until they have exhausted their surrogacy pay. This is for administrative purposes only and the teacher will not accrue annual leave or continuous service past the date their contract ended.

## Acting up Arrangements

If you are currently in an Acting Up Position, then you will continue in that position until such time as you receive notice of a return to your substantive post (which should be no earlier than if you had of been in work).

If you are currently claiming by the Temporary Responsibility Payments form and you are entitled to be paid the first 13 weeks of your family leave at normal salary you should continue to claim for the 13 weeks or the earlier of your return to your substantive post.

If you are paid your acting up payments automatically, you will continue to be paid this until the earlier of your return to your substantive post or 13 weeks family leave.

## 7. RETURNING TO WORK

An employee who wishes to return to work prior to the end of the family leave period must give the council 28 days' notice. If the appropriate notice is not given, the council may postpone her/his return for up to 28 days or to the end of the family leave period if this is earlier.

The Council will automatically assume that you will be returning to work on the latest date possible. Should you wish to return at an earlier time you must inform the Council in writing at least 28 days in advance of the date you propose to return to work by completing sections 1, 2 and 5 of the [Notification of Intended Return to Work SUR 4 TEACH Return Form](#).

Where an employee is unable to return to work after the family leave period has ended, or on the date previously notified, due to sickness, the normal sickness notification and certification procedures as set out in the [Attendance Management Procedure](#) will apply.

HR Support will write to you to confirm your start date following family leave. A copy of this letter will be sent to your employing Service, and Payroll will be notified in order to authorise the re-commencement of your pay.

### Options for Returning To Work

If you are unable to or do not wish to return to work on a full time basis, the Council has adopted a number of policy initiatives, which will hopefully assist you.

Please note that employees who receive a child following a surrogate arrangement or are the natural, adoptive or foster parent, or guardian, of a child aged 17 or under (or 01-10-2014 8/10 under 18 in the case of a disabled child who receives disability living allowance) have the statutory right to request flexible working patterns.

### Job Share Scheme

If you wish to return to work on a job share basis please refer to the approved [Job Share Fact Sheet for Teachers](#).

### Right to Return to Work

An employee has the right to return from the periods of leave described in these guidelines to the post in which she/he was employed under the original contract of employment and on terms and conditions not less favourable than those which would have been applicable to her/him had she/he not been on family leave. Where it is not practicable by reason of redundancy for the council to permit the employee to return

to work in her/his post the employee is entitled to be offered a suitable alternative vacancy where one exists.

Suitable alternative employment may also be offered in exceptional circumstances other than redundancy (e.g. A general reorganisation) which would have occurred if the employee had not been on family leave, and necessitate a change in the post in which she/he was employed prior to her/his leave commencing. A temporary employee will not have the right to return to work where her/his contract would have expired during the leave period but will be entitled to all other provisions in these guidelines provided she/he meets the criteria where these are stated.

## 8. CHILD CARE

One of the key factors in returning to work following family leave is arranging child care to meet your requirements. Whilst the Council does not provide its employees with any direct assistance with child care, Aberdeenshire Family Information Service provides free advice and information on child care options. Details of registered child minders and day care facilities in your area of Aberdeenshire, as well as impartial guidance on choosing child care, can be obtained from:

Aberdeenshire Family Information Service  
Craigearn Business Park  
Morrison Way  
Kintore  
AB51 0TH  
Telephone: 01467 628579  
Advice Line: 0800 298 3330  
Website: [www.aberdeenshire.gov.uk/children/afis/aboutus.asp](http://www.aberdeenshire.gov.uk/children/afis/aboutus.asp)

If you live in the Aberdeen Area information can be obtained from:

Aberdeen City Council,  
Children's Services Information Service  
Telephone: 01224 443344  
Email: [csis@aberdeencity.gov.uk](mailto:csis@aberdeencity.gov.uk)

### Aberdeenshire Council Child Care Initiative

Aberdeenshire Council operates a Child Care Initiative Scheme, which allows employees to 'sacrifice' a portion of their weekly or monthly salary to pay for full or part of their child care costs. If both parents and legal guardians are employees of Aberdeenshire Council, they can both apply to join the scheme.

The benefit to employees is that they will not require to pay tax or national insurance contributions on the portion of salary sacrificed. Employees will be able to choose an amount up to a maximum of £55 a week that can be sacrificed. Aberdeenshire Council will pay this amount directly to the child care provider. The child care provider must be registered with the Scottish Commission for the Regulation of Care (Care Commission) in order for employees to be eligible to apply to join the scheme.

Further details including terms and conditions, frequently asked questions and application pack are available on Arcadia, or by contacting:

Child Care Initiative Administrator  
Payments Section (Finance)  
Aberdeenshire Council,  
Woodhill House,  
Aberdeen,  
AB16 5GB  
Telephone: 01224 664578  
Email: [employee.benefits@aberdeenshire.gov.uk](mailto:employee.benefits@aberdeenshire.gov.uk)

For further advice and guidance on any of the above please contact [Human Resources and Organisational Development](#).

# Family Leave – Surrogacy Guidelines

## Index of Documents

### Guidance

<b>Revision Date</b>	<b>Previous Revision Date</b>	<b>Summary of Changes</b>
14-04-2014		Creation of all Documents
01-10-2014	14-04-2014	New category of Unpaid Leave as part of new SPL guidelines
21-08-2015	01-10-2014	Format Update
12-10-2016	21-08-2015	Amendment
06-07-2018	12-10-2016	SNCT/18/65 Reckonable Service (Probationers)
29-03-2019	06-07-2018	Removal of Aberdeenshire Childcare Voucher Scheme