



Teachers' Surrogacy Scheme

Date Approved	January 2025
Date of Next Review	January 2027

Changes from original policy following feedback / changes in legislation

Change	Reason Reviewer/ Legislation	Date
Policy Scope & Purpose - Legislative requirements: <i>added</i> The Protection from Redundancy (Pregnancy and Family Leave) Act 2023 The Maternity Leave, Adoption Leave and Shared Parental Leave (Amendment) Regulations 2024.	Legislation change April 2024	Oct 2024
Added Glossary	Reviewer	Oct 2024
Amended wording through the policy to align to the latest Surrey policy adding abbreviations where applicable.	Reviewer	Oct 2024
1 Reworded interpretation of surrogacy	Reviewer	Oct 2024
2.2 Elaborated on parental orders and eligibility to take parental leave.	Reviewer	Oct 2024
3 Added signposting to Adoption policy.	Reviewer	Oct 2024

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Policy scope and purpose	
Scope and purpose	<p>This document sets out the entitlements for Inclusive Education Trust (IET) teachers on Teachers' Pay terms and conditions regarding surrogacy leave and pay.</p> <p>This policy intends to:</p> <ul style="list-style-type: none"> · Inform teachers of their entitlements in relation to surrogacy and pay (referring also to maternity/adoption leave policies) · Provide guidance on surrogacy leave and pay processes. (referring also to maternity/ adoption leave policies) · Support managers by providing them with details of the Trust's obligations to teachers.
Start point of the policy	To be referred to when a teacher becomes aware that they are undertaking the role of a surrogate or seeking a surrogate, regarding leave or pay.
End Point of the Policy	This policy may be utilised in addition to the maternity/adoption leave policies, up to and including the return to work with further information in relation to surrogacy/maternity/adoption leave and pay entitlements and procedures following a return to work. At any stage when information on surrogacy/maternity/adoption pay or leave is required.
Legislative requirements	<p>Maternity and Parental Leave Regulations 1999</p> <p>The Employment Rights Act 1996, as amended by the Employment Relations Act 1999</p> <p>The Employment Act 2002</p> <p>The Work and Families Act 2006</p> <p>The Protection from Redundancy (Pregnancy and Family Leave) Act 2023</p> <p>The Maternity Leave, Adoption Leave and Shared Parental Leave (Amendment) Regulations 2024</p> <p>Surrogacy arrangements act 1985</p>
Who uses this policy	This policy applies to all teachers on Teachers' terms and conditions of employment. It will not apply to Support staff.

This policy should be read in conjunction with the Maternity, Adoption, Shared Parental and Paternity Leave/Pay Policies as applicable.

Glossary

OAL	Ordinary Adoption Leave
OML	Ordinary Maternity Leave
OMP	Occupational Maternity Pay
OAP	Occupational Adoption Pay
SMP	Statutory Maternity Pay
SAP	Statutory Adoption Pay

1. Introduction

Surrogacy is when someone else carries and gives birth to a baby for the intended parents.

If you use a surrogate, the surrogate will be the child's legal parent at birth.

Birth mother in surrogacy arrangement

- Regardless of whether the birth mother will be caring for the child after it is born, a pregnant employee carrying a child as a surrogate mother has the same legal entitlement to Statutory Maternity Leave (SML) as any new or expectant mother.
- If the employee is the birth mother in a surrogacy arrangement, provided they meet the eligibility criteria, they will also be entitled to receive Statutory Maternity Pay (SMP) and Occupational Maternity Pay (OMP) (see Maternity Leave Policy for further details).

2. Surrogate Mother / main parent

2.1 Surrogacy and adoption

- If the employee becomes the mother / main parent through a surrogacy agreement and they choose to formalise this by legally adopting the child, they will not normally be entitled to Statutory Adoption Leave (SAL) or Statutory Adoption Pay (SAP), unless they are newly matched with the child through an approved adoption agency (see Adoption Policy for further details)
- However, the employee will be entitled to Occupational Adoption Pay (OAP) and Occupational Adoption Leave (OAL), subject to the normal eligibility criteria being met. They will also need to follow the same procedures for claiming leave and pay as set out in the Adoption Policy.

2.2 Surrogacy and Parental Order

If someone is using a surrogate parent to have a baby and they or their partner have a genetic link to the child, they can apply for a 'parental order'.

A parental order transfers the parental rights from the surrogate so they become the 'intended parents' by law.

If they're eligible, one of the intended parents can take adoption leave and one can take statutory paternity leave. It is up to the parents to decide which each of them uses.

They cannot change or swap which one they're taking once they have informed the school.

- Intended parents in surrogacy cases, who qualify for a Parental Order are also eligible for:
 - Time off for up to 2 ante-natal medical appointments; and
 - Statutory Adoption Leave (SAL); and
 - Statutory Adoption Pay (SAP); and
 - Shared Parental Leave and Pay, if eligible.

3 Leave and pay arrangements

For leave and pay arrangements relating to surrogacy refer to the Teachers Adoption Leave policy according to the employees start of employment date. In addition to the guidelines contained within the policy the following will apply:

The teacher looking to apply for OAP & OAL relating to a surrogacy arrangement must:

- Meet the eligibility criteria for Statutory Adoption pay (SAP) and Trust's Occupational Adoption Pay (OAP)
- Give the appropriate notice in line with the appropriate Teachers Adoption Policy
- Provide their manager with the following documents:
 - ❖ Documentary evidence of the surrogacy arrangement
 - ❖ A copy of the MATB1 certificate issued to the surrogate mother
 - ❖ A copy of the Parental Order. See **Note 1** below.

Note 1: By law the Parental Order must be applied for, and issued, within 6 months of the child's birth. If this is not supplied within 6 months of the Adoption Leave and Occupational Adoption payments commencing, the school has a right to reclaim the payments made and to be compensated for the leave taken.

3.1. Fathers, partners and co-adopters in surrogacy arrangement support for birth mother

- One week's Maternity Support Leave may be available to the husband/partner or other nominated carer of the birth mother, provided the other eligibility criteria for Ordinary Paternity Leave are met.

3.2 Ordinary Paternity Leave and Pay – limited entitlement

- Ordinary Paternity Leave (OPL) may be available to:
 - the biological father of a child received through a surrogacy arrangement; or
 - the co-adopter of a child received through a surrogacy arrangement where the child is adopted as a new match through an approved adoption agency.

In either case, the eligibility criteria for OPL must be fulfilled.

- OPL may be limited to one week if the Maternity Support Leave element is claimed by the birth mother's husband/partner or other nominated carer.
- If the employee is not the biological father and is not formally adopting the child through an approved adoption agency, there is no entitlement to OPL.
- If the employee obtains a Parental Order, they may be eligible for unpaid Parental Leave.