

Renfrewshire Joint Negotiating Committee for Teachers

To: Renfrewshire Joint Negotiating Committee for Teachers

On: 5 September 2023

**Report by
Head of Education**

Surrogacy Policy

1. Summary

The SNCT Handbook, section 7 Family Leave (Paragraphs 7.5.1 – 7.5.9) provides the national guidance for all teaching staff in relation to surrogacy leave and entitlement.

However, following recent discussions with a member of the teaching faculty who was looking to apply for this leave it was agreed that whilst the guidance was helpful it did not provide our teaching staff with detail required in relation to application form, clarity of the process via flowchart and a clear understandable policy for them to follow.

2. Recommendations

It is recommended that the attached Surrogacy Policy and attachments be approved and distributed to all Headteachers for distribution to raise awareness to their staff.

Issue Number: 1

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Review Date: 7/25

This document is
available in alternative
formats on request.

Surrogacy Pay and Leave Policy

For Teachers, Quality Improvement Officers, Educational
Psychologist and Music Instructors



Renfrewshire
Council

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Appendix 1 – Surrogacy Leave Application Form

VERSION CONTROL

Version	Date	Details of Review/Revisals made	Next Review date

1. Introduction

- 1.1 The Council strives to create a working environment that support employees with parenting responsibilities to achieve a better balance between their lives inside and outside of work. The Council workforce is diverse, and many employees are working parents.
- 1.2 The Surrogacy Leave and Pay Policy is designed to offer flexibility to employees at particular stages of their lives.
- 1.3 This policy covers leave and pay provisions relating to:
 - Surrogacy Leave

2. Purpose and Aims

- 2.1 The purpose of this policy is to promote the Council's parenting leave and pay provisions which support and encourage employees to share parenting responsibilities.
- 2.2 This policy aims to:
 - Provide information and raise awareness of surrogacy leave in the Council, eligibility criteria and the associated pay rates.
 - Support employees who have parenting responsibilities and help them achieve a better balance between working and parenting commitments.
 - Meet all legislative employment requirements.
 - Implement fair, inclusive and consistent requesting and approval processes.
 - Support the achievement of the Council's workforce planning, equality, diversity and gender pay gap outcomes.

3. Scope

- 3.1 This policy complements other Council policies such as Parenting Leave and Pay Policy, Flexible Working, Special Leave/Supportive Leave, Respect at Work, and Equality and Diversity. Further guidance for Local Government Employees is available from HR & OD.

4. Our Responsibilities

- 4.1 Managers, Elected Members, HR & OD, Customer and Business Services and the Trade Unions all have a part to play in ensuring the principles of this policy are applied effectively.

5. Definition

Surrogacy is the practice whereby a woman (the surrogate mother) carries a child for another person and (usually) that person's partner (the commissioning couple) as the result of an agreement prior to conception that the child should be handed over to them after the birth.

6. Legal Parentage

Provision as to the legal parentage of children resulting from certain fertility treatments is made by the Human Fertilisation and Embryology Act 1990 and the Human Fertilisation and Embryology Act 2008.

The 1990 Act and 2008 Act set out specific conditions that must be fulfilled for the commissioning couple to apply for a parental order. If they do not fulfil these conditions, they cannot apply for a parental order.

6.1 Parental Order

A couple (married couple, civil partners or a couple in an enduring family relationship) may additionally be treated as the legal parents of the child if a parental order has been made in their favour under s.54 of the Human Fertilisation and Embryology Act 2008.

Such an order made before 6 April 2010 will not have any automatic nationality consequences for the child but may justify registration under s.3(1) of the BNA 1981 (see Chapter 9). A child who is the subject of a parental order made in a UK court after 6 April 2010 will become a British citizen from the date of the order if either of the persons who obtained the order is a British citizen.

7 Surrogacy Leave

Where the baby is the subject of a Parental Order following a legal surrogacy arrangement, the Council will provide surrogate parents with the equivalent entitlements as those which apply to adoptive parents. The Council requires:

- A copy of the MATB1 prior to the birth of the baby, which the birth mother obtains from their GP or midwife at around 26 weeks before the baby is due. This will provide the employer with notice of the impending birth and date the leave will commence.

And

- A copy of the parental order, this should be provided no later than 6 months after the commencement of the leave.

7.1 Application for Surrogacy Leave

Employees should have discussed with their line manager/Head Teacher their intention to take the leave, when providing a copy of the MATB1, at around 26 weeks before the baby is due.

The employee should complete the attached pro-forma (see appendix 1 of this policy) and arrange to submit this application to their line manager, in writing, no less than 28 days before the leave is due to commence.

Only one person can take the leave, so a decision must be taken by the couple as to who the leave will be applied to. Once this decision is taken, the employee will be entitled to 52 weeks Family Leave, regardless of length of service.

If an employee has less than 26 weeks continuous contractual service, prior to the week in which she/he received the child, they will be entitled to 52 weeks' Family Leave without pay.

7.2 Commencement of Leave

An employee can choose to start their leave on the date of the baby's birth or the day after birth. If an employee wishes to delay the start of the leave, you must tell your line manager/Head Teacher at least 28 days before the date it's currently due to start.

If an employee wishes to start their leave earlier than planned, you must tell your line manager/Head Teacher at least 28 days before the date you want to change it to.

If your baby is born earlier than expected or is premature, your leave starts straight away, namely on the date your baby is born.

8 Entitlement to Pay and Leave

8.1 Pay

If you are an employee who has less than 26 weeks' continuous service, you are entitled to 52 weeks' adoption leave without pay.

If you are an employee who has 26 weeks continuous service, you will be entitled to be paid the following:

(a) 13 weeks at normal salary and

(b) 26 weeks at a sum equivalent to the payment made for statutory adoption pay, provided the employee's average weekly earnings are not less than the lower earnings limit for National Insurance contribution liability.

8.2 Leave

An employee shall accrue annual leave in accordance with the provisions of paragraphs 5.3 to 5.5 of the SNCT handbook and this can be found at the following link [Part 2 Section 5 - SNCT Handbook](#).

During the period of leave an employee is allowed up to ten days at work with normal pay as Keeping in Touch Days, without bringing the leave period to an end.

An employee is also entitled to take time off to attend 2 unpaid antenatal appointments with the surrogate carrying the child.

9 Eligibility for shared parental leave

For employees to be eligible to take shared parental leave, both partners must meet certain eligibility requirements.

A partner is defined as: The father of the child, or the person who, at the date of the child's birth, is married to, the civil partner of, or the partner of the mother. A partner may be someone of either gender, who lives with the mother and the child in an enduring family relationship but who is not the mother's child, parent, grandchild, grandparent, sibling, aunt, uncle, niece or nephew.

9.1 Surrogate's Eligibility for Shared Parental Leave (ShPL)

The person taking surrogacy leave, as set out in this policy, is eligible for shared parental leave, if they:

- has at least 26 weeks' continuous service prior to the weeks in which she/he receives the child and remains in continuous employment with the organisation until the week before any period of shared parental leave that she/he takes.
- has, at the date of the child's birth, the main responsibility, apart from the partner, for the care of the child.
- is entitled to Family Leave in respect of the child; and
- complies with the relevant leave curtailment requirements (or has returned to work before the end of the leave) and shared parental leave notice and evidence requirements.

In addition, for the mother to be eligible for shared parental leave, the partner must:

- have been employed or been a self-employed earner in at least 26 of the 66 weeks immediately preceding the expected week of childbirth.
- have average weekly earnings of at least the maternity allowance threshold for any 13 of those 66 weeks; and
- have, at the date of the child's birth, the main responsibility, apart from the mother, for the care of the child.

10 Confidentiality

Information processed may include paper or electronic records and will be done so in line with the General Data Protection Regulation (Regulation EU 2016/679) ("GDPR"), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications) and any legislation that, in respect of the United Kingdom, replaces, or enacts into domestic law, GDPR or any other law relating to data protection, the processing of personal data and privacy as a consequence of the United Kingdom leaving the European Union.

11 Equality and Human Rights Impact Assessment

This policy has been impact assessed in line with the Council's obligation to comply with the Equality Act 2010 and the Public Sector Equality Duty.

12 Monitoring and Review

This policy will be reviewed regularly and in line with any legislative and organisational changes. The recognised Trade Unions will be consulted on any future changes to this policy.

RENFREWSHIRE COUNCIL
SURROGACY LEAVE APPLICATION FORM
Complete and Sign the Section that is Applicable



Section 1 - Application for Surrogacy Leave/Pay

Employees with more than 26 weeks Continuous Service

Complete this section if you have 26 weeks or more continuous service prior to the week in which you receive the child and are applying for surrogacy leave in line with SNCT handbook section 7.5.1 to 7.5.9

I would like my Surrogacy leave to start on: _____

I have also attached a copy of the MATB1 certificate and note that I am required to provide a copy of the parental order for the child as soon practicable possible, but not later than before the baby is 6 months old.

I agree to the conditions applicable and confirm that I intend to return to work.

Signature _____ **Date** _____

Section 2- Application for Unpaid Surrogacy Leave

Employees with less than 26 weeks Continuous Service

As I have less than 26 weeks continuous service by the week prior to receiving the child, I wish to confirm that I intend to apply for surrogacy leave to commence on _____.

I agree to the conditions applicable and confirm that I intend to return to work.

Signature _____ **Date** _____

SURROGACY FLOWCHART

Consider how much Surrogacy Leave you want to take. You will automatically qualify for 52 weeks' Surrogacy Leave, regardless of your length of service with the Council.

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

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

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

Employees can choose to start their surrogacy leave on the date of the baby's birth or the day after birth.

If an employee wishes to amend their start date, you must give 28 days' notice.

Employees should inform their line manager/Head Teacher by filling in the Surrogacy Leave application form, no less than 28 days before the leave is due to commence. The line manager or nominated officer must advise Employee Services by forwarding the form on to them.

If your baby is born earlier than expected or is premature, your leave starts on the date your baby is born.

The council will require:

- A copy of the MATB1 prior to the birth of the baby and
- A copy of the parental order, this should be provided no later than 6 months after the commencement of the leave

Employee Services will confirm, in writing, within 28 days, setting out when they expect the employee to return to work. Employee Services must forward all information to payroll.

If you want to return to work before the end of your adoption leave period, you must give 21 days' notice of your early return.