

CHAPTER 3 – ADOPTIVE LEAVE SCHEME

(Should be read in conjunction with the [General Provisions for All Schemes, Definitions](#))

1. **Adoptive Leave Scheme**

- 1.1 The Adoptive Leave Scheme is regulated by the Adoptive Leave Act 1995, as amended.

2. **Entitlement to Adoptive Leave**

- 2.1 Adoptive Leave is a period of 24 consecutive weeks paid leave, from the date of placement of the child with the adopting teacher.
- 2.2 Adoptive Leave is granted to teachers who are adopting mothers or sole male adopters. The adopting father who is not a sole male adopter may be entitled to Adoptive Leave in certain circumstances. Please see paragraph 14 for details on this provision.
- 2.3 In order to qualify for Adoptive Leave, the adoption, whether foreign or domestic, must be formalised by the **Adoption Authority of Ireland**, the independent statutory body with responsibility for overseeing the adoption process on behalf of the State.

3. **Statutory Additional Unpaid Adoptive Leave**

- 3.1 An adopting teacher may take up to a maximum of 16 consecutive weeks statutory additional unpaid Adoptive Leave, commencing on the day following statutory Adoptive Leave.
- 3.2 In the case of foreign adoptions, some or all, of the statutory additional unpaid Adoptive Leave may be taken prior to the date of placement, in order to allow the adopting teacher to attend meetings and/or classes held outside of the State, or for the purposes of familiarisation with the child. A period of statutory additional unpaid Adoptive Leave, taken under this provision, must cease no later than the last day immediately prior to the date of placement. The balance of any statutory additional unpaid Adoptive Leave remaining, may be taken immediately after the end of Adoptive Leave.
- 3.3 A teacher who avails of statutory additional unpaid Adoptive Leave may be entitled to receive PRSI credits. The Application for Adoptive Leave Credits which is available from the DEASP, must be completed by the teacher and employer, and returned to the DEASP. It is the teacher's responsibility to apply for these credits.

4. Non-Statutory Additional Unpaid Adoptive Leave

- 4.1 An adopting teacher who, on completion of Adoptive Leave and statutory additional unpaid Adoptive Leave may apply for non-statutory additional Unpaid Adoptive Leave until the end of the school year i.e. 31st August.
- 4.2 Non-Statutory additional Unpaid Adoptive Leave is subject to obtaining written sanction from the employer, at least 6 weeks in advance of an intention to avail of this leave.

5. Sequence in which Adoptive Leave must be taken

- 5.1 Adoptive Leave entitlements must be taken in the following sequence:
 - a) Statutory Adoptive Leave (24 weeks)
 - b) Statutory additional unpaid Adoptive Leave (up to a maximum of 16 weeks). In the case of foreign adoptions, some or all, of the statutory additional unpaid Adoptive Leave may be taken prior to placement
 - c) Non-Statutory additional unpaid Adoptive Leave until the end of school year (31st August)
- 5.2 When all Adoptive Leave types have been exhausted, as appropriate to each individual, the next working day becomes the date of resumption of duties for the adopting teacher.

6. Time off for attendance at Pre-Adoption Classes and Meetings within the State

- 6.1 An adopting teacher is entitled to time off work, without loss of pay, to attend pre-adoption classes or meetings held within the State which they are obliged to attend as part of the adoption process.
- 6.2 Two weeks' notice should be given for each absence referred to in this paragraph and appropriate documentary evidence provided.
- 6.3 Substitution for such absences will be paid by the Department/ETB.

7. Application Procedures

- 7.1 Application for all types of Adoptive Leave, both paid and unpaid, should be made by the adopting teacher to his/her employer, at least 6 weeks prior to the planned commencement date using the Application Form at [Appendix A](#) of this Chapter.
- 7.2 In order to avail of statutory Adoptive Leave, the adopting teacher must complete the DEASP [AB1 Form](#) and should ensure that the employer completes the employer's portion. The completed form must be forwarded

to the DEASP by the adopting teacher at least 6 weeks prior to the leave commencement date. The AB1 Form should NOT be sent to the Department.

- 7.3 In the case of a domestic adoption, the adopting teacher must furnish to the employer, no later than 4 weeks after date of placement, a *Certificate of Placement* issued by the Adoption Authority of Ireland. The *Certificate of Placement* states the date of placement, the gender and age of the child being adopted and the name and address of the adopting parent.
- 7.4 In the case of foreign adoption, the adopting teacher must furnish to the employer a *Declaration of Eligibility and Suitability* from the Adoption Authority of Ireland, which states the date of placement, the gender and age of the child being adopted and the name and address of the adopting parent in advance of the date of placement. As soon as possible after the date of placement the adopting teacher should provide written confirmation of placement to their employer.

8. Notification and Recording of Leave

- 8.1 The Adoptive Leave absence must be notified by the employer to the Department/ETB via the OLCS/relevant ETB system, not later than 6 weeks prior to the commencement of the leave.
- 8.2 The procedure for recording Adoptive Leave absence on the OLCS is available at [Appendix B](#) of this Chapter.
- 8.3 An example Adoptive Leave case is attached at [Appendix C](#) of this Chapter.

9. Pay Arrangements and Adoptive Benefit

- 9.1 Continuation of salary during Adoptive Leave is not a statutory entitlement and any action which necessitates an adjustment to a teacher's pay, should be notified to the Paymaster immediately.
- 9.2 Adoptive Benefit payment is a taxable income.
- 9.3 Under the DEASP regulations, the following are the arrangements for PRSI contributors:
- Full rate (Class A): Any Adoptive Benefit payable by the DEASP will issue directly to the teacher. A deduction from salary, equivalent to the maximum weekly rate of Adoptive Benefit, will be applied by the Paymaster.
 - Modified rate (Class D): No entitlement to Adoptive Benefit. Therefore, no deduction is applied to the teacher's salary and they remain on their ordinary salary.

9.4 If the amount of Adoptive Benefit payable to the teacher is less than the maximum, or if a teacher is not entitled to any Adoptive Benefit, he/she should notify the Paymaster immediately to ensure that they can remain on the appropriate salary.

9.5 Changes to the automatic deduction can be made provided a copy of DEASP's written notice of the actual Adoptive Benefit rate applicable, if any, is furnished by the teacher to the Paymaster. Deductions, where appropriate, will be made fortnightly during the period of statutory paid Adoptive Leave, up to a maximum of 24 weeks. If the Adoptive Leave absences are recorded late on the OLCS/relevant ETB system, any arrears will be deducted from the teacher's salary.

10. Status during Adoptive Leave

10.1 A teacher absent on any of the Adoptive Leave types referred to below is deemed to have been in employment at that time.

- a) Paid Adoptive Leave is fully reckonable for all purposes including progression on the incremental salary scale and seniority.
- b) Statutory additional unpaid Adoptive Leave is reckonable for all purposes, with the exception of superannuation and remuneration.
- c) Non-statutory additional unpaid Adoptive Leave is not reckonable for any purpose including accrual of annual leave.

11. Replacement Teacher

11.1 The employer may appoint a substitute teacher, paid by the Paymaster while a teacher is absent on Adoptive Leave and this must be recorded by the employer via the OLCS/relevant ETB system.

11.2 Contracts awarded to cover Adoptive Leave absences should make clear reference to the fact that the replacement teacher's appointment may have to be terminated in the event of the absent teacher returning to duties earlier than initially expected (e.g. an absent teacher postpones part of the Adoptive Leave due to the hospitalisation of the child).

12. Employment while on Adoptive Leave

12.1 A teacher absent on Adoptive Leave may not engage in any type of teaching or other paid employment.

12.2 Under the DEASP regulations, Adoptive Benefit may be terminated if a teacher engages in paid employment while on Adoptive Leave.

12.3 Salary payment will be reviewed by the Paymaster in the event of termination of Adoptive Benefit arising from non-compliance with the terms of the Adoptive Benefit Scheme.

13. Postponement of Adoptive Leave

13.1 In the event that the date of placement is postponed, the commencement date of Adoptive Leave may also be postponed, provided the employer is informed of the new date of placement as soon as possible.

13.2 In the event of the hospitalisation of the child, a request may be made to the employer for postponement of:

- a) Statutory Adoptive Leave
- b) Statutory additional unpaid Adoptive Leave
- c) Statutory Father's Leave
- d) Statutory additional unpaid Father's Leave

13.3 Postponement of Adoptive Leave will require the absent teacher to resume duties in the school during the period of postponement.

13.4 An application for postponement must be made in writing to the employer, accompanied by certification from the hospital in which the child is hospitalised. The employer must notify the teacher in writing as soon as possible of its decision. If the leave is postponed, the employer and the teacher must agree the date of return to work.

13.5 The Paymaster and the DEASP must be notified immediately if the teacher is to return to work to facilitate pay adjustment, cease any benefit from the DEASP and the finalisation of payment to the replacement teacher.

13.6 The postponed leave must be taken in one continuous period commencing not later than 7 days after the discharge of the child from hospital. The maximum period for postponement of the leave is 6 months.

13.7 The teacher must provide the employer with a letter or other appropriate document from the hospital, or the child's doctor, confirming the child's discharge date.

13.8 If the teacher becomes ill, having returned to work and before he/she has taken the postponed leave, he/she will be considered to have started the postponed leave on the first day of absence due to illness, unless the teacher notifies the employer that he/she does not wish to begin the postponed leave. If this happens he/she will forfeit the postponed leave and the absence will be treated as Sick Leave. The normal procedures in relation to Sick Leave should then be followed, including the furnishing of a medical certificate where appropriate.

14. Father's Leave

- 14.1 In the event of the death of the adopting mother at any time prior to or during her Adoptive Leave, the adopting father, becomes entitled to the remainder of the leave.
- 14.2 The adopting father should inform his employer as soon as possible of his intention to take Adoptive Leave and/or statutory/non-statutory additional unpaid Adoptive Leave.
- 14.3 The Certificate of Placement, or Declaration of Eligibility and Suitability, should be provided to the employer within 4 weeks of placement/commencement of the leave.
- 14.4 The leave should normally commence within 7 days of the event which has created the father's entitlement to the leave, (or on the day of placement, whichever is later) but the employer should exercise discretion appropriate to the individual circumstances. To avail of his leave entitlement, the father in this circumstance may simply apply in writing to his employer. As soon as is reasonably practicable, the employer should be provided with a copy of the death certificate of the mother.
- 14.5 The sequencing arrangement outlined in Paragraph 5 will also apply to the Father's Leave:
 - a) Father's Leave (the transfer to the father of any balance remaining of the mother's 24 week Adoptive Leave entitlement)
 - b) Statutory additional unpaid Father's Leave (the transfer to the father of any balance remaining of the mother's additional 16 weeks of statutory additional unpaid Leave)
 - c) Non-statutory additional unpaid Father's Leave to end of school year (31st August).

15. Termination of Statutory Additional Unpaid Adoptive/Father's Leave

- 15.1 An application to take statutory additional unpaid Adoptive Leave, or statutory additional unpaid Father's Leave, may be withdrawn in writing, for any reason, up to 4 weeks prior to the proposed commencement date of such leave. If the 4 week cancellation period provided for in the Act has passed, entitlement to withdraw an application has been lost.
- 15.2 However, in the event of illness, a formal request can still be made to the employer, even after a period of such leave has commenced, to terminate the leave in favour of a certified Sick Leave absence. Approval of a request to terminate the Adoptive Leave is at the discretion of the employer. If approved, the employer and the teacher must agree the date for any such

termination of the leave. The date agreed cannot be earlier than the first day of certified illness and not later than when the terminated Adoptive Leave would otherwise have ended. The normal procedures in relation to Sick Leave will then apply. The teacher will not be entitled subsequently to take the statutory additional unpaid Adoptive Leave or any part of it.

- 15.3 To facilitate necessary pay adjustment, the employer must notify the Paymaster that the teacher is now on Sick Leave.

16. Termination of Placement

- 16.1 Where, other than as a result of the death of the child, the placement of a child with a teacher terminates before the expiration of the Adoptive Leave or statutory/non-statutory additional unpaid Adoptive Leave, the teacher must notify the employer in writing of the date of termination within 7 days. The Adoptive Leave ends on the date of termination.

17. Return to work following Adoptive Leave

- 17.1 The employer should provide the absent teacher with a written statement of his/her absence and expected date of resumption of duties. The employer should be provided with a written notice from the teacher, 4 weeks before he/she is due to return, confirming the intention to resume duties from that date.

Appendix A - Application Form for Adoptive Leave

The Application Form should be fully completed and submitted to the employer, at least 6 weeks prior to the planned commencement date.

If the teacher pays Class A PRSI contributions, a completed AB1 Form should be submitted to the DEASP. This Form is available from the DEASP or online at www.welfare.ie

PART 1A - TEACHER APPLICATION

Teacher's Name: _____ Contact No.: _____

Home Address: _____

E-mail Address: _____

PPSN: _____

School Name: _____ Roll No.: _____

APPLICATION IN RESPECT OF: (please tick as appropriate)

- Statutory Adoptive Leave (24 weeks)
- Statutory additional unpaid Adoptive Leave (up to a maximum of 16 weeks)
- Non-Statutory additional unpaid Adoptive Leave (up to end of school year i.e. 31st August)

PART 1B – ADOPTIVE LEAVE DETAILS

Expected date of placement: ____/____/____

(A Certificate of Placement should be submitted to the employer no later than 4 weeks after date of placement. In the case of a foreign adoption, a Declaration of Eligibility and Suitability should be provided to the employer in advance of the placement).

Statutory Adoptive Leave (24 weeks):

From _____ to _____ (enter inclusive dates)

Statutory Additional Unpaid Adoptive Leave (up to a maximum of 16 weeks):

In the case of foreign adoption, if any of the statutory additional unpaid Adoptive Leave is to be taken prior to placement, indicate dates:

From _____ to _____ (enter inclusive dates)

Non-Statutory Additional Unpaid Adoptive Leave (up to end of school year i.e. 31st August):

From _____ to _____ (enter inclusive dates)

Declaration

I wish to apply for Adoptive Leave in accordance with the Adoptive Leave Scheme as set out in Circular 0054/2019 titled '*Leave Schemes for Registered Teachers Employed in Recognised Primary and Post Primary Schools*'.

I confirm that the information provided in the application is true and accurate.

Signature of Teacher: _____ Date: _____

Data Protection Privacy Statement

The main purpose for which the Department requires you to provide this personal data to your employer is to enable your Adoptive Leave application to be processed. Your employer will retain your application form and accompanying documents in accordance with their Data Protection policy. Further information in relation to this policy is available on request from your employer.

The Privacy Notice outlining further information in relation to this application form can be found at: <https://www.education.ie/en/The-Department/Data-Protection/gdpr/gdpr.html> Full details of the Department's Data Protection policy setting out how we will use your personal data as well as information regarding your rights as a data subject are available at <https://www.education.ie/en/The-Department/Data-Protection/>. Details of this policy are also available in hard copy from Teacher/SNA Terms & Conditions, Department of Education & Skills, Cornamaddy, Athlone, Co. Westmeath, N37 X659, upon request.

PART 2 – EMPLOYER DECISION

I certify that I have approved/refused (delete as appropriate) the Adoptive Leave in accordance with the Adoptive Leave Scheme as set out in Circular 0054/2019 titled '*Leave Schemes for Registered Teachers Employed in Recognised Primary and Post Primary Schools*'. The following documents will be retained for audit purposes:

- 1) Application(s) for Adoptive Leave
- 2) Certificate of Placement/Declaration of Eligibility and Suitability
- 3) Copy of Decision Notice issued to teacher

Approved Adoptive Leave has been recorded on the OLCS/relevant ETB system

Signature: _____ Date: _____
(Employer)

Application Form/Supporting Documentation should NOT be submitted to the Department of Education and Skills. They should be retained in the school/ETB with any other relevant documentation for record and audit purposes with the relevant personnel records.

Appendix B - Procedures relating to the Recording of Adoptive Leave on OLCS

- 1) Click Add under Leave on the OLCS menu
- 2) Enter start and end date of the leave.
 - Click Next
- 3) Select the staff member on leave
 - Select the leave category – Family Leave and
 - Select the leave sub category – Adoptive Leave

The total number of days in the range should read 168 (24 weeks) in respect of Adoptive Leave.

 - Click Next
- 4) Click Add Child and enter details
 - Click Add

Information to Assist Employers in the Completion of the [AB1 Form](#)

- A list of the PRSI weeks for the current and previous year is displayed on OLCS to assist in the completion of the Employer's section of the AB1 form.
- Where the total number of PRSI weeks is 52 for the previous tax year and the teacher has been in continuous employment since then, the total number of weeks to be entered is 52. If the total number of weeks is less than 52 and the teacher has a contract to the start date of her Adoptive Leave, the total number of weeks is the sum of PRSI weeks in the previous tax year plus the PRSI weeks in the current tax year to the start date of her Adoptive Leave.
- Enter the appropriate Employers Registered Number, sign, date and stamp accordingly

Employer Register Number for Post-Primary Teachers is 0081300S

Employer Register Number for Primary Teachers is 4000099H

- Click Add. A confirmation message is displayed.

Additional Adoptive Leave (Unpaid)

It is important to note the Unpaid Adoptive Leave absences cannot be entered on OLCS until the next working day, subsequent to the notification of Adoptive Leave. The Paymaster must first verify the Adoptive Leave in order to commence deductions from salary.

Appendix C - Example Adoptive Leave Calculation

Example based on a date of placement of 20th September 2019 and full use of the 112 days statutory additional unpaid Adoptive Leave (some taken before the date of placement and some after the Adoptive Leave); followed by additional non-statutory unpaid leave to the end of the school year.

Leave Type	Dates taken
(1) Statutory Adoptive Leave (24 weeks) <i>(commencement date is the date of placement)</i>	From: 20 th September 2019 To: 5 th March 2020
(3) Statutory Additional Unpaid Adoptive Leave <u>Prior to date of placement</u> (max of 16 weeks or 112 days) ⁴ i. <i>In this example 11 unpaid days are taken prior to the date of placement for the purposes of familiarisation with the child in a foreign adoption.</i> ii. <i>101 days remain out of the 112 day allocation of statutory additional unpaid Adoptive Leave</i>	From: 9 th September To 19 th September 2019 <i>(11 days)</i>
(4) Statutory Additional Unpaid Adoptive Leave (max of 16 weeks or 112 days) <i>In this example 11 days have already been taken prior to placement [see (1) above], leaving up to 101 days to be taken now. The full 101 days remaining are taken in this case.</i>	From: 6 th March 2020 To: 14 th June 2020 <i>(101 days inclusive)</i>
(5) Provisional Resumption date following Statutory Additional Unpaid Adoptive Leave <i>(if no other leave is taken, this is the date that the teacher should return to school duties)</i>	15 th June 2020
(6) Teachers have a further option of Non Statutory Additional Unpaid Adoptive Leave to the end of the school year (31 st August) <i>(In this example the teacher chooses to avail of the non-statutory leave option)</i>	From: 15 th June 2020 To: 31 st August 2020
(7) Final date for resumption of duties	1 st September 2020

⁴ Foreign adoption: Where a period of Statutory Additional Unpaid Adoptive Leave is required before the day of placement, for the purposes of meetings outside the State or familiarisation with the child to be adopted, some or all of the Statutory Additional Unpaid Adoptive Leave may be taken before the day of placement.