

**To: The Chair of the Probation Board/Trust
The Chief Officer of the Probation Board
The Chief Executive of the Probation Trust
(Copy enclosed for the Head of Human Resources)
The Secretary of the Probation Board/Trust
Members of the NNC**

24 June 2008

NNC CIRCULAR NO.10/2008

Dear Madam/Sir

**NNC Agreement on Pay and Conditions of Service
New Section A17 – Adoption Pay and Leave Scheme**

Please find attached new Section A17 of the NNC Agreement on Pay and Conditions of Services. The NNC has for a long time encouraged Boards/Trusts to introduce a formal adoption leave scheme for employees adopting children and is pleased now to provide a formal scheme.

This new Section 17, which was approved by the NNC at its May meeting, provides a scheme which mirrors the provisions of the Maternity Pay and Leave Scheme and is compliant with current statute.

A revised Index Page is also attached.

Any queries on the Scheme should be addressed to either the Joint Secretaries or to Nick Jones, PACU National HR Manager, Policy Development.

Yours faithfully

**Christine Lawrie
Jonathan Ledger**

Joint Secretaries

ADOPTION PAY AND LEAVE

1. The adoption pay and leave scheme shall apply to all eligible employees regardless of the number of hours worked per week.

Eligibility

2. An employee will need to satisfy the following conditions in order to qualify for adoption pay and leave. S/he must:
 - have at least 26 weeks' continuous service by the end of the week in which s/he is notified of being matched with a child for adoption;
 - be newly matched with a child for adoption by an approved adoption agency and have notified that agency of agreement to the placement and date of placement;
 - ensure that the employing probation board is given the correct notification of the intention to take adoption leave.
3. Paid adoption leave is available to employees who are adopting a child on their own, or for one member of a couple who are adopting together. The other member of the couple, or the partner of the adopter, may be eligible for paid paternity or maternity support leave.
4. Only one period of pay and leave is available regardless of whether more than one child is being placed for adoption as part of the same arrangement.
5. The employee will be asked to provide documentary evidence in the form of a matching certificate from the adoption agency.

Initial Obligations on the Employee

6. An employee must notify her/his employing probation board of the following:
 - (i) that s/he is proposing to adopt a child
 - (ii) the expected date of the child's placement
 - (iii) the date on which s/he intends to start adoption leave.
7. Such notice should be given within 7 days of the employee being notified by the adoption agency that s/he has been matched with a child (the qualifying week) or as soon as is reasonably practicable.

Obligations on the Employer

8. On receipt of the employee's notice of the expected start date of adoption leave the employing probation board will respond in writing to the employee, within 28 days, notifying her/him of the date on which her/his Additional Adoption Leave will end.

Adoption Leave Entitlement

9. All employees with 26 weeks' continuous service by the end of the qualifying week will be entitled to 26 weeks' Ordinary Adoption Leave followed immediately by a further 26 weeks' Additional Adoption Leave beginning on the day immediately following that on which Ordinary Adoption Leave ends.
10. Adoption leave shall start from the placement date or from a fixed date which is no earlier than 14 days before the expected placement date.
11. If it becomes necessary for the employee to change the start date of adoption leave, s/he must notify her/his employing Board at least 28 days in advance of the revised date.

Adoption Pay

12. Employees who have:
 - 26 weeks' continuous service up to and including the qualifying week and
 - average earnings in the eight weeks up to and including the qualifying week of at least equal to the lower earnings limit for National Insurance contributions

shall be entitled to Statutory Adoption Pay (SAP). This will be six weeks at 9/10ths of average weekly earnings followed by 33 weeks at the standard rate per week (£112.75 as at 6 April 2007) or 9/10ths of earnings if this is less.

13. Payments for employees who have completed 1 year's continuous service up to and including the qualifying week shall be as follows:-
 - (i) For the first six weeks of absence an employee shall be entitled to nine-tenths of a week's pay offset against payments made by way of SAP.
 - (ii) An employee who declares in writing that s/he intends to return to work will, for the subsequent 12 weeks, receive half a week's pay without deduction except by the extent to which the combined pay and SAP exceeds full pay.
 - (iii) For the remaining 21 weeks the employee will receive her/his SAP entitlement.
 - (iv) For employees not intending to return to work payments shall be the employee's entitlement to SAP.
 - (v) Payments made by the probation board during adoption leave under (ii) above shall be made on the understanding that the employee will return to probation board employment for a period of at least three

- (vi) An employee who resigns or is dismissed, for whatever reason, before the date on which s/he intended to start a period of Ordinary Adoption leave (or before s/he has notified the intended start date of the period of leave) loses any right to adoption leave but will retain any right to be paid Statutory Adoption Pay during her/his adoption pay period.

Where the adoption does not take place

- 14. Where an employee has started a period of adoption leave before the placement date and the placement is not made, the child dies or is returned to the adoption agency, the employee's leave will normally finish 8 weeks after the end of the week in which the disruption took place.
- 15. Payment of SAP continues for 8 weeks after the end of the week in which the disruption took place or until the end of the employee's SAP period if that is sooner.

Adoption from outside the UK

- 16. Where adoption takes place from outside the UK, the employee is required to inform the employing probation board in writing of the intention to take adoption leave within 28 days of receiving official notification from the relevant domestic authority.
- 17. In addition to providing the information at Paragraph 6 above, the employee should provide evidence within 28 days of the child entering the UK of the date of entry (such as a plane ticket or a copy of entry clearance documents).
- 18. In the case of a child adopted from outside the UK, the adoption leave period may begin on the date the child enters the UK or from a predetermined date which is no later than 28 days after this date.
- 19. All other conditions remain unchanged.

Right to Return to Work

- 20. Subject to Paragraph 21 below an employee has the right to return to the job in which s/he was employed under her/his original contract of employment and on terms and conditions not less favourable than those which would have been applicable to her/him if s/he had not been absent. "Job", for this purpose, means the nature of the work which s/he is employed to do and the capacity and place in which s/he is so employed.

21. Where it is not practicable by reason of redundancy during the employee's Ordinary or Additional Adoption Leave periods for the probation board to permit her/him to return to work in her/his job as defined in Paragraph 20 above the employee has the right to be offered a suitable alternative vacancy where one exists, provided that the work to be done in that post is suitable to her/him and appropriate to the circumstances, and that the capacity and place in which s/he is to be employed and her terms and conditions of employment are not substantially less favourable to her/him than if s/he had been able to return to the job in which s/he was originally employed.
22. Suitable alternative employment may also be offered if exceptional circumstances other than redundancy (e.g. a general re-organisation), which would have occurred if the employee had not been absent, necessitate a change in the job in which s/he was employed prior to her/his absence. The work to be done should be suitable to her/him and appropriate to the circumstances and the capacity and place in which s/he is to be employed and the terms and conditions of employment should not be less favourable to her/him than if s/he had been able to return to the job in which s/he was originally employed.

Exercise of the Right to Return to Work

23. If an employee chooses to take Ordinary Adoption Leave only or wishes to return to work before the end of her/his Additional Adoption Leave period, s/he must give the employer at least 8 weeks' notice of the date on which s/he wishes to return.
24. Where an employee is unable to return on the expected day due to sickness the absence will be covered by the sickness scheme in the normal way.
25. For an employee where, because of an interruption of work (whether due to industrial action or some other reason), it is unreasonable to expect her/him to return on the due date, s/he may instead return when work resumes, or as soon as reasonably practicable thereafter.

Return to Work – Flexible Working Arrangements

26. Qualifying employees who are parents of children under six years of age, or of disabled children under 18, have statutory rights to apply to change their working arrangements.
27. Probation boards should consider the full range of flexible working arrangements and support facilities for employees returning to work.

Relationship with Sickness and Annual Leave

28. Adoption leave will not be treated as sick leave and will not therefore be taken into account for the calculation of the period of entitlement to sickness pay.

29. Neither contractual nor statutory sick pay is payable during any part of the Adoption Leave period. An employee wishing to claim sick pay during Adoption Leave will need to bring the Adoption Leave to an end by giving the required 8 weeks' notice. At the point at which the Adoption Leave ends, normal sick pay rules will apply.
30. Employees shall accrue a pro rata contractual annual leave entitlement during their period of Ordinary Adoption Leave which may be taken at the beginning or the end of the Adoption Leave period. Normal carry over rules apply. A period of Additional Adoption Leave does not attract contractual annual leave. In calculating the employee's annual leave entitlement where a period of Adoption Leave intervenes, cross reference should be made to ensure that the statutory annual leave entitlement, including any entitlement to paid Bank Holiday leave, for the whole leave year is met or exceeded.

Definition of a Week's Pay

31. The term "a week's pay" for employees whose remuneration for normal working hours does not vary with the amount of work done in the period, is the amount payable by the probation board to the employee under the current contract of employment for working her/his normal hours in a week. Where there are no normal working hours, a week's pay is the average remuneration in the period of 12 weeks preceding the date on which the last complete week ended excluding any week in which no remuneration was earned.
32. Nothing in the above provisions shall be construed as providing rights less favourable than statutory rights.

Keeping-in-Touch Schemes

33. An employee may voluntarily carry out 10 days' paid work for the employing probation board during a period of statutory Adoption Leave without bringing the Adoption Leave to an end. The purpose of this provision is to allow an employee to 'keep in touch' with the workplace. Work includes any work done under the contract of employment and may include training or any activity aimed at keeping in touch. Any work carried out on a day constitutes one day's work. Payment should be at the employee's normal daily rate of pay offset by any occupational or Statutory Adoption Pay received for that day. This provision is not intended to create any obligation for employees on adoption leave to take part in keeping-in-touch days nor is there any obligation on a probation board to provide them.
34. Probation boards and employees should maintain contact over the adoption leave period. Boards need to ensure that employees are kept informed of vacancies, any significant workplace developments and training opportunities. Reasonable contact from time to time during adoption leave, for example to discuss the employee's return to work, does not bring the adoption leave period to an end.

35. For further information on parental leave, paternity leave, maternity support leave, part-time working, career breaks etc., please refer to the appropriate Sections of the NNC National Agreement on Pay and Conditions of Service and any local policies and procedures.