

ADOPTION RIGHTS - A GUIDE

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Isle of Man
Government

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Introduction

This is a guide to adoption leave and paternity leave for adopting parents. It sets out the minimum amounts of leave which employees are entitled to when a child is placed with him or her for adoption. It also explains what an employee can do if he or she thinks the employer has denied him or her these rights.

The Employment Act 2006 sets out the basic rights to adoption leave and paternity leave. The detail of the rights is mainly set out in the Adoption Leave Regulations 2007.

The right to leave

Where a couple are adopting jointly, one of them may opt to take adoption leave and the other paternity leave. Where an individual is adopting, he or she may take adoption leave and his or her partner may also be entitled to paternity leave.

Both the right to adoption leave and the right to paternity leave apply to employees when a child is matched or placed for adoption with them. The entitlement is to leave without pay.

Government Departments

Adoption and paternity leave are part of a package of rights and benefits designed to give support to working fathers and mothers and their partners.

- **The Department for Enterprise (DfE)** has responsibility for the legislation in relation to adoption leave and paternity leave.
- **The Social Security Division of the Treasury** has responsibility for the payment of associated benefits.
- **The Social Services Division of the Department of Health and Social Care** is responsible for arrangements for adoption.
- **The Manx Industrial Relations Service (MIRS)** provides guidance and advice to employers and employees on the application of employment rights.

Copies of this Guide and the legislation can be downloaded from -

www.gov.im/categories/working-in-the-isle-of-man/employment-rights/guides-to-employment-rights/

The Guide is written in general terms and is not intended to be a complete or authoritative statement of the law. It is not possible to provide a definitive statement of the law, which in any case is the function of the Employment and Equality Tribunal and the High Court. Only the official wording of Acts, Regulations and Orders, and the interpretation given by the Courts, are authoritative.

No responsibility can be accepted for errors or omissions, or their consequences.

Terms and abbreviations used in this guide

AAL	Additional Adoption Leave
adopter	a person who has been matched with a child for adoption or, if a couple have been matched jointly, the member of the couple who has chosen to take adoption leave.
adoption agency	the Department of Health and Social Care or an approved adoption society
DfE	the Department for Enterprise
matched	A person is <i>matched</i> with a child for adoption when an adoption agency decides that the person would be a suitable adoptive parent for the child, either individually or jointly with another person.
MIRS	the Manx Industrial Relations Service
notified	A person is <i>notified of having been matched</i> with a child on the date on which he or she receives notification of the adoption agency's decision to place the child with him or her.
OAL	Ordinary Adoption Leave
placed	A child is <i>placed</i> with an adopter when the child goes to live with him or her permanently with a view to being formally adopted in the future.
partner	A <i>partner</i> means a person who lives with the adopter and the child in an enduring family relationship but is not an immediate relative. This may include a person in a same-sex relationship.

1. Outline of the rights

1.1 What are the rights?

Adoption leave

The right to adoption leave allows an eligible employee who is adopting a child to take time off when a child is placed with him or her for adoption. An eligible employee is entitled to 26 weeks' **Ordinary Adoption Leave (OAL)** and (in certain cases) a further 26 weeks' **Additional Adoption Leave (AAL)**, running from the end of OAL. During the period of OAL the employee may also be entitled to Adoption Allowance (see 5 for further information).

Paternity leave (Adoption)

The right to paternity leave allows an eligible employee to take leave to care for his or her child or to support the adopter following placement for adoption. He or she can take either one week's or two consecutive weeks' paternity leave, and during this time may be entitled to **Paternity Allowance** (see 5 for more information).

Employees who take OAL or paternity leave are entitled to return to the same job; employees who take AAL are entitled to return to the same job or, if that is not reasonably practicable, a suitable alternative (see 6). Employees taking adoption or paternity leave are also protected against unfair treatment (detriment) and dismissal on grounds related to taking adoption or paternity leave (see 7).

1.2 Who qualifies for these rights?

These rights apply to any employee, regardless of the hours he or she works, provided that he or she satisfies the relevant qualifying conditions.

An '**employee**' is a person who works for an employer under a contract between them, called a 'contract of employment' (which may, but need not, be in writing: it may be agreed orally or simply implied by the nature of the relationship). A contract of employment is defined as 'a contract of service or apprenticeship'.

Workers other than employees do not qualify.

If you are unsure whether or not you are an employee contact the Manx Industrial Relations Service (see Annex 4).

1.3 What happens if employers have their own leave scheme for employees who are adopting?

This guidance is about employees' statutory rights to adoption and paternity leave under employment legislation. An employee cannot contract out of these rights. Those employees whose contract of employment entitles them to

adoption or paternity leave may take advantage of either those contractual rights or their statutory rights, depending on which are more favourable.

Employees who believe they are not entitled to the statutory rights described here should check whether they are entitled to take leave under their contract of employment.

1.4 What happens if employers have their own adoption or paternity pay scheme?

Employers are not obliged to pay employees who are on adoption or paternity leave (there is no equivalent in the Isle of Man to the UK Statutory Adoption Pay or Statutory Paternity Pay). However, some employees may have contractual rights to pay when they take adoption or paternity leave. Their right to claim Adoption or Paternity Allowance is not affected by receiving such contractual pay.

2. Who is eligible for adoption or paternity leave?

2.1 What makes an employee eligible for adoption leave?

To be entitled to Ordinary Adoption Leave (OAL), the employee must:

- have been matched with a child to be placed with him or her by an adoption agency;
- where the child is to be adopted by a couple jointly, have chosen to be treated as the adopter for this purpose;
- have notified the agency that he or she agrees that the child should be placed with him or her, and on the date of placement; and
- notify the employer of when he or she wants to take adoption leave within 7 days of the date on which he or she is notified of having been matched with the child.

To be entitled to Additional Adoption Leave (AAL), the employee must

- have had the child placed with him or her for adoption;
- have worked continuously (see 2.3 below) for the same employer for 26 weeks, ending with the week (beginning on a Sunday) in which he or she was notified of having been matched with the child; and
- have taken OAL (which did not end prematurely with the cancellation of the placement or the dismissal of the employee).

2.2 What makes an employee eligible for paternity leave?

The employee must:

- be either married to, or the unmarried partner of, the child's adopter;
- have or expect to have main responsibility, with the adopter, for the upbringing of the child;
- have worked continuously (see 2.3 below) for the same employer for 26 weeks, ending with the week (beginning on a Sunday) in which the adopter is notified of having been matched with the child (the 'matching week');
- continue to work for the employer from the matching week up to the date of placement;
- notify his or her employer of when he or she intends to take paternity leave, within 7 days of the date on which the adopter is notified of being matched with a child; and
- be taking the time off either to support the adopter or to care for the newly placed child (an employee cannot take the leave for any other purpose).

2.3 What counts as working continuously for the period needed to qualify for pay and leave?

Continuous employment generally means working for the same employer without a break. As a rule, if an employee changes jobs, there will be a break in continuity.

However, in certain circumstances, even if there is a break or a change of employer, an employee’s continuity of employment will not be treated as broken.

2.4 What happens if the employer decides the employee does not qualify for adoption or paternity leave?

The employer or employee, or both, may seek advice from the Manx Industrial Relations Service. If the dispute cannot be resolved, the Employment and Equality Tribunal can determine the matter (see 8).

2.5 Can an employee take both adoption leave and paternity leave?

No. Where an individual is adopting he or she may take adoption leave. If he or she has a partner, the partner may take paternity leave. Where a couple are adopting jointly, they must decide which of them is to take adoption leave and which is to take paternity leave.

3. Period of leave

3.1 How much leave can an employee take?

Adoption leave

An employee who is an adopter can take up to 52 weeks' adoption leave. This is made up of 26 weeks' OAL (for which any employee is eligible), followed immediately by 26 weeks' AAL (if the special qualifications for AAL are met).

An employee can take only one period of leave, even if more than one child is placed for adoption at the same time.

Paternity leave

An eligible employee can choose to take either one week's or two consecutive weeks' paternity leave. Leave cannot be taken as odd days, or as two separate weeks.

An employee can take only one period of leave, even if more than one child is placed for adoption at the same time.

3.2 When can an employee start his or her leave?

Adoption leave

The earliest an adopter can begin adoption leave is 14 days before the expected date of placement. An adopter can choose to begin leave on:

- the date on which the child is placed with him or her for adoption; or
- a date chosen in advance by the adopter, which must be not more than 14 days before, and not later than, the date on which the child is expected to be placed for adoption.

An employee must give his or her employer the required notice of his or her leave.

Paternity leave

An employee can only take paternity leave in the 56 days beginning with the date on which the child is placed for adoption. He or she can choose to begin leave on:

- the date on which the child is placed with the adopter;
- a date chosen in advance by the employee, which must be after the expected date of placement; or
- a date falling a specified number of days after the expected date of placement.

An employee must give the employer the required notice of leave.

3.3 Can an employee change his or her mind about when the leave starts?

An employee can change the date on which he or she wants to start adoption or paternity leave, as long as he or she gives the employer the required notice (see 4).

3.4 What happens if the placement is disrupted during leave?

Adoption leave

If an employee begins a period of adoption leave before the child is placed with him or her, and is then told that the placement will not be made, the leave will normally finish 8 weeks after the end of the week in which that happens.

If, during an employee's adoption leave, the child dies or is returned to the adoption agency, the leave will normally finish 8 weeks after the end of the week in which that happens.

An employee must remember to give the employer 28 days' notice if he or she is returning to work earlier than expected for one of the above reasons (see 4).

Paternity leave

If the adopter is told, before paternity leave has started, that the placement will not be made, the employee will not be able to take paternity leave. If the child is placed and then dies or is returned to the adoption agency, the employee will be entitled to paternity leave as planned.

3.5 What should an employee do if the date of placement is earlier or later than expected?

If the date of placement changes, the employee should discuss the situation with the employer and give the appropriate notice to change the start date (see 4). If the employer and employee are unable to resolve any disagreement about leave, either or both should consult the Manx Industrial Relations Service.

3.6 What happens if a placement is delayed but adoption leave has already begun?

If the placement is delayed (for whatever reason) and the employee has already begun the adoption leave, he or she cannot stop the leave and start it again at a later date. If an employee plans to start adoption leave at any time before the actual date of placement, he or she must be sure that the placement will be going ahead on the date agreed before starting the leave.

4. Notification and evidence required for leave

4.1 When must an employee tell his or her employer that he or she is going to take leave?

Adoption leave

An employee must tell the employer that he or she intends to take adoption leave not more than 7 days after the day the employee is notified of having been matched with the child or, if this is not possible, as soon as reasonably practicable.

Paternity Leave

An employee must tell the employer that he or she intends to take paternity leave no more than 7 days after the day the adopter is notified of being matched with the child or, if this is not possible, as soon as reasonably practicable.

It is recommended that an employee notify the employer that he or she intends to take adoption or paternity leave as soon as the adopter is approved for adoption. This may be before an employee has received, or needs to submit, the documentary evidence (see 4.3 below), but it will allow the employer time to plan for the intended period of leave.

4.2 What must an employee tell the employer if he or she wants to take adoption or paternity leave?

Adoption leave

The employee must tell his or her employer (in writing if the employer requests it) —

- that he or she intends to take adoption leave;
- the date on which the child is expected to be placed for adoption; and
- the date he or she intends to start adoption leave.

Additionally, if the employer requests it, the employee has to provide documents from the adoption agency (see 4.3 below).

Paternity leave

The employee must tell his or her employer (in writing if the employer requests it) —

- the date on which the adopter was notified of having been matched with the child;
- the date on which the child is expected to be placed for adoption;
- the length of leave (one or two weeks) he or she has chosen to take; and
- the date he or she has chosen to start paternity leave.

He or she must also give a signed declaration if the employer requests it (see 4.3 below).

After the placement the employee must inform his or her employer of the date on which the child was placed. This should be done as soon as reasonably practicable after that date.

4.3 What evidence does the employee have to give the employer if he or she wants to take adoption or paternity leave?

Adoption leave

If the employer requests it, the employee must produce to the employer one or more documents issued by the adoption agency which give information including:

- the name and address of the adoption agency;
- the date the adopter was notified of having been matched with the child; and
- the date on which the child is expected to be placed for adoption.

The certificate at **Annex 1** can be used for this purpose. The adoption agency should be asked to complete it and give it to the adopter.

Paternity leave

If the employer requests it, the employee must give a signed declaration that:

- he or she is taking leave to care for the child or to support the child's adopter;
- he or she is married to, or the partner of, the adopter; and
- he or she has, or expects to have, the main responsibility (apart from the adopter's responsibility) for the upbringing of the child.

The form of declaration at **Annex 2** can be used for this purpose.

4.4 What notice must an employee give to his or her employer?

Adoption leave

The employee must begin leave on a date, chosen in advance by him or her. At least 28 days' notice of that date must be given to the employer.

Paternity leave

The employee must begin leave on a date, chosen in advance by him or her. At least 28 days' notice of that date must be given to the employer. Leave must be completed within 56 days of the date of the child's placement.

4.5 What notice must an employee give if he or she wants to change the date the leave starts?

Adoption leave

The employee can change the date on which he or she wants the leave to start, as long as the employer is given notice as follows:

- if he or she wants to change the leave so that it starts on the date of placement, at least 28 days before the expected date of placement;
- if he or she wants to change the leave so it starts on a fixed date chosen in advance, at least 28 days before that date.

If this is not possible, he or she must tell the employer as soon as is reasonably practicable.

Paternity leave

The employee can change the date on which he or she wants the leave to start, as long as the employer is given notice as follows:

- if he or she wants to change the leave so that it starts on the date of placement, at least 28 days before the expected date of placement;
- if he or she wants to change the leave so that it starts on a date falling a specified number of days after the expected date of placement, at least 28 days before the date which falls the same number of days after the expected date of placement; and
- if he or she wants to change his or her leave so it starts on a predetermined date, at least 28 days before that date.

If this is not possible, he or she must tell the employer as soon as is reasonably practicable.

4.6 What should an employee do if the date of placement is earlier or later than expected?

If the date of placement changes before leave begins, the employee should discuss the situation with his or her employer and give the appropriate notice to change the start date (see above). If the employer and employee are unable to resolve any disagreement about leave, either or both should consult MIRS.

4.7 What should the employer do after notification that the employee intends to take adoption or paternity leave?

Adoption leave

An employer who has been properly notified of the intended start date of adoption leave must in turn notify the employee of the date on which the adoption leave will end (which will be 26 or 52 weeks later depending on

whether or not the employee is entitled to take OAL and AAL or just OAL). This must be done within 28 days of receiving the employee's notification.

The letter at **Annex 3: Model letter for employers to acknowledge notification of adoption leave**, can be used for this purpose.

If an employer does not inform the employee of the date the leave will end, and as a result the employee returns to work on the wrong day, the employer cannot use this as a ground for disciplinary action.

Paternity leave

There is no requirement for an employer to respond to an employee's notification of paternity leave, however an employer may wish to do so for their own records.

4.8 What notice must an employee give if he or she wants to return to work early from adoption leave?

An employee will be expected to return to work when he or she has taken the full entitlement to 26 or 52 weeks' adoption leave. (See 4.7 above for notification of the date of return.) If the employee wishes to return before then, he or she must give the employer 28 days' notice of the intended date of return.

If the employee does not give 28 days' notice, the employer is entitled to postpone the date of return for 28 days, although it cannot be postponed beyond the date on which the leave would normally end.

4.9 Can an employee involved in an industrial dispute give notice that he or she intends to take adoption or paternity leave?

An employee who is involved in an industrial dispute can still notify the employer of the date adoption leave or paternity leave will start. This date can be within the period of the dispute. Any notice that the employee has already given the employer is not affected by a subsequent trade dispute.

4.10 How should an employee give notice if he or she intends to take parental leave in respect of a disabled child immediately before or after adoption or paternity leave?

The employee should give the required notice for parental leave as well as the notice for adoption or paternity leave. For further details about parental leave for parents of children with disabilities see the DfE guide *Parental Leave for Parents of Disabled Children* .

5. Adoption Allowance and Paternity Allowance (Adoption)

In general, employers are not obliged by law to pay employees who are taking adoption or paternity leave. There may however be an obligation to do so under an employee's contract of employment, (which may mirror a scheme for payment during maternity or paternity leave in the case of childbirth). There is no equivalent in the Isle of Man to the UK Statutory Adoption Pay or Statutory Paternity Pay.

An employee who meets certain qualifying conditions based on his or her recent employment and earnings record may claim Adoption Allowance or Paternity Allowance (Adoption) from the Social Security Division of the Treasury.

Adoption Allowance is available for up to 39 weeks, and Paternity Allowance (Adoption) is available for up to two weeks.

For more information see the Treasury's *Benefits and Contributions Information Guide*.

6. Terms and conditions during leave and on return

6.1 What happens if employees have a contractual entitlement to adoption or paternity leave or pay as well as a statutory one?

If the employee has a contractual right to paternity or adoption leave as well as a statutory right, he or she may take advantage of whichever is more favourable.

6.2 Does the employee's contract continue during adoption or paternity leave?

The contract of employment continues throughout adoption leave and paternity leave, unless the employer dismisses the employee, or the employee resigns, or the contract expires.

6.3 Does an employee continue to benefit from statutory employment rights while on adoption or paternity leave?

The employee continues to qualify for statutory employment rights during adoption or paternity leave, and the period of leave counts towards a period of continuous employment required to qualify for any of those rights or for calculating a period of notice or redundancy payment.

6.4 Does an employee continue to benefit from contractual terms and conditions while on adoption or paternity leave?

Ordinary Adoption Leave

While on OAL, employees are entitled to benefit from all the normal terms and conditions of the contract of employment which would have applied, were he or she not on adoption leave, except for terms relating to wages or salary (unless the contract provides otherwise).

Terms and conditions from which an employee should continue to benefit include participation in share schemes, reimbursement of professional subscriptions, use of a company car or mobile phone (unless it is provided for business use only) and health club membership.

The period of leave also counts for assessing seniority, pension rights and other payments based on length of service (such as pay increments) under the contract of employment.

Additional adoption leave

While on AAL, an employee is entitled to benefit from the employer's implied obligation of trust and confidence and any contractual terms relating to the following:

- notice of termination of employment by the employer;
- compensation in the event of redundancy; and

- disciplinary and grievance procedures.

An employee is bound by the implied obligation of good faith to the employer, and by any contractual terms relating to the following:

- notice of termination of employment by him or her;
- disclosure of confidential information;
- acceptance of gifts or benefits; and
- participation in any other business.

The employer does not have to count the period of AAL for assessing contractual rights which are dependent on length of service or a period of qualifying service, such as seniority, pension rights and pay increments. For these purposes, service (including OAL) before AAL is joined up with the service after return to work as if they were continuous.

Paternity leave

While on paternity leave, employees are entitled to benefit from all the normal terms and conditions of the contract of employment which would have applied were he or she not on paternity leave, except for terms relating to wages or salary (unless the contract provides otherwise).

Terms and conditions from which an employee should continue to benefit include participation in share schemes, reimbursement of professional subscriptions, use of a company car or mobile phone (unless it is provided for business use only) and health club membership.

The period of leave also counts for assessing seniority, pension rights and other payments based on length of service (such as pay increments) under the contract of employment.

6.5 Can an entitlement to holiday accrue during periods of adoption/ paternity leave?

Ordinary Adoption Leave

While on OAL, an employee continues to accrue any contractual entitlement to holiday with pay, as if he or she were at work.

Even if the employee has no right to holiday with pay under the contract of employment, the statutory entitlement to paid annual leave (see below) continues to accrue while on OAL.

Additional adoption leave

While on AAL, an employee does not accrue a contractual entitlement to holiday with pay, unless the contract of employment provides otherwise.

The employee's entitlement to paid statutory annual leave (see below) continues to accrue while on AAL.

Paternity leave

While on paternity leave, an employee continues to accrue any contractual entitlement to holiday with pay, as if he or she were at work.

Even if the employee has no right to holiday with pay under the contract of employment, the entitlement to paid statutory annual leave (see below) continues to accrue while on paternity leave.

Note on statutory annual leave

Employees have a statutory right to up to 4 weeks' paid annual leave. For guidance on this statutory right, see the DfE guide *Holidays and Holiday Pay*.

The entitlement to annual leave must be used during the leave year in which the leave accrues and cannot be carried over into a new leave year. An employee cannot take annual leave during adoption leave or paternity leave but, subject to the usual arrangements with the employer, can take a period of annual leave immediately before or after adoption leave or paternity leave, as long as it is within the leave year in which the leave has accrued. The only case in which an employee can receive payment in lieu for outstanding leave under the Regulations is where the employment has terminated.

6.6 What can an employee do if the employer does not comply with the terms and conditions in the contract of employment during adoption or paternity leave?

An employee on adoption or paternity leave who is denied benefits he or she is entitled to under the contract of employment may seek redress, just as if he or she were at work, by claiming damages for breach of contract in the High Court or, if the breach is an unlawful deduction from wages, by making a complaint to the Employment and Equality Tribunal (see 8). The employer or employee, or both, should consult MIRS.

If the breach of contract is so serious that the employee is obliged to resign, this may be treated as 'constructive dismissal', and he or she may be entitled to make a complaint of unfair dismissal to the Employment and Equality Tribunal (see 8). Before taking any such action, however, an employee should take legal advice or consult the Manx Industrial Relations Service.

An employee may also make a complaint to the Employment and Equality Tribunal that he or she has been dismissed or subjected to a detriment by the employer because he or she took or sought to take adoption or paternity leave (see 7).

6.7 Can an employee return to his or her job after taking adoption or paternity leave?

Ordinary Adoption Leave

At the end of OAL an employee is entitled to return to the same job on the same terms and conditions of employment as if he or she had not been absent, unless a redundancy situation has arisen. If a redundancy situation has arisen, the employee is entitled to be offered a suitable alternative vacancy on terms and conditions that are not substantially less favourable.

The employee is also entitled to benefit from any general improvements to the rate of pay or other terms and conditions which may have been introduced during the leave. If the employee is not given his or her job back at the end of OAL, he or she may make a complaint of unfair dismissal to the Employment and Equality Tribunal (see 8).

When OAL is immediately preceded by 2 or more periods of statutory leave, which did not include any period of additional maternity leave or AAL, or parental leave of more than 4 weeks, the employee is entitled to return to the job in which he or she was employed before the absence began.

Additional Adoption Leave

After AAL, whether or not preceded by another period of statutory leave, an employee is entitled to return to the same job on the same terms and conditions in relation to pay as if he or she had not been absent. The employee is also entitled to benefit from any general improvements to the rate of pay or other terms and conditions which may have been introduced during the leave.

If it is not reasonably practicable for the employee to return to the same job, he or she must be offered a suitable alternative on terms and conditions which are no less favourable than the original job. (This does not apply if the employee works for an employer who, together with any associated employer, employed fewer than 5 employees immediately before the end of the period of AAL.)

Subject to that, if the employee is not given his or her job back, or a suitable alternative, at the end of AAL, he or she may make a complaint of unfair dismissal to the Employment and Equality Tribunal (see 8).

Paternity leave

At the end of paternity leave an employee is entitled to return to the same job on the same terms and conditions of employment as if he or she had not been absent, unless a redundancy situation has arisen. If a redundancy situation has arisen the employee is entitled to be offered a suitable alternative vacancy on terms and conditions that are not substantially less favourable. The employee is also entitled to benefit from any general improvements to the rate of pay or other terms and conditions which may have been introduced during the leave. If

an employee is not given his or her job back at the end of paternity leave, he or she may make a complaint of unfair dismissal to the Employment and Equality Tribunal (see 8).

When OAL is immediately preceded by 2 or more periods of statutory leave, which did not include any period of additional maternity leave or AAL, or parental leave of more than 4 weeks, the employee is entitled to return to the job in which he or she was employed before the absence began.

6.8 What should an employee do if he or she does not want to return to work at the end of adoption leave?

If an employee does not wish to return to work after OML or AAL he or she should give the employer notice in the usual way. If the contract of employment specifies a period of notice, he or she should give that amount of notice. If the contract does not specify a period of notice he or she should give the required statutory notice. Further information about giving notice can be found in See the DfE guide '*Isle of Man Employment Rights and Responsibilities – a Guide for Employers, Employees and Workers*' for more information.

6.9 What should an employee do if he or she is ill at the end of adoption or paternity leave?

If an employee cannot go back to work at the end of adoption or paternity leave because of illness, he or she should follow the normal procedures for sickness absence for the job, such as notifying the employer.

7. Protection against detriment and dismissal and the right to written reasons for dismissal

Employees are protected from suffering a detriment or dismissal for taking, or seeking to take, adoption or paternity leave.

An employee who believes that he or she has been treated unfairly for these reasons can complain to the Employment and Equality Tribunal (see 8), regardless of length of service.

An employee who is not given his or her job back (or in certain cases, a suitable alternative) at the end of paternity leave or adoption leave is entitled to make a complaint of unfair dismissal to the Employment and Equality Tribunal (see 8), regardless of length of service.

7.1 What protection is there against detriment for taking adoption or paternity leave?

An employee is protected against being subjected to detriment by any act or deliberate failure to act by his or her employer because:

- he or she took or sought to take adoption or paternity leave; or
- the employer believed that he or she was likely to take adoption leave or paternity leave; or
- the employee failed to return after a period of AAL; and
 - the employer failed to give appropriate notice of the return date and the employee reasonably believed that the period had not ended; or
 - the employer gave less than 28 days' notice of the date on which the leave would end, and it was not reasonably practicable for the employee to return on that date.

Detriment can cover a wide range of forms of unfair treatment, including denial of promotion, facilities or training opportunities which the employer would otherwise have offered or made available.

Employees who suffer detrimental treatment at work for the above reasons may make a complaint to the Employment and Equality Tribunal (see 8).

7.2 In what circumstances is an employee protected from dismissal under these rights?

Dismissal means the termination of employment by the employer, with or without notice. It can also include resignation by the employee because the employer has made a substantial breach of the contract of employment indicating an intention no longer to be bound by it (known as 'constructive dismissal'). It can also include the expiry of a limited-term contract without its renewal.

The DfE guide *'Isle of Man Employment Rights and Responsibilities – a Guide for Employers, Employees and Workers'* sets out the meaning of dismissal more fully.

It is unlawful for an employer to dismiss an employee because:

- he or she took or sought to take adoption or paternity leave; or
- the employer believed that he or she was likely to take adoption leave or paternity leave; or
- the employee failed to return after a period of AAL; and
 - the employer failed to give appropriate notice of the return date and the employee reasonably believed that the period had not ended; or
 - the employer gave less than 28 days' notice of the date on which the leave would end, and it was not reasonably practicable for the employee to return on that date.

The protection against dismissal also applies if an employee is selected for redundancy on these grounds.

7.3 What is the right to a written statement of reasons for dismissal?

An employee who is dismissed for any reason has a right to a written statement of the reasons for his or her dismissal, regardless of length of service, if he or she requests it. An employee dismissed during adoption leave is entitled to a written statement of the reasons for dismissal without having to request it and regardless of length of service.

7.4 What happens if a redundancy situation arises when an employee is on adoption or paternity leave?

Adoption leave

If a redundancy situation arises during an employee's OML or AAL which makes it impractical for the employer to continue to employ him or her under the original contract, the employee is entitled to be offered a suitable alternative vacancy where there is one. The offer should be made before the original contract ends and the new contract must take effect immediately when the original contract does end.

If the employer fails to offer a suitable alternative vacancy and there is one, the redundancy will be regarded as unfair dismissal. If the employee unreasonably turns down a suitable alternative vacancy, he or she may give up the right to a redundancy payment. An employee may make a complaint to the Employment and Equality Tribunal (see 8) about redundancy during adoption leave.

Paternity leave

An employee taking paternity leave should be treated in the same way as any other employee when a redundancy situation arises. This includes treatment relating to consultation about the redundancy and consideration for any other job vacancies. The MIRS *Guide to Redundancies* gives general information about statutory redundancy rights.

8. Enforcement through the Employment and Equality Tribunal

8.1 What should an employer or employee do if they disagree about entitlement to adoption or paternity leave?

They should first seek to resolve the matter by mutual agreement – perhaps through the employer's own grievance or appeals procedure, where one exists.

If the dispute cannot be resolved, either the employer or the employee, or both, should consult MIRS.

8.2 Under what circumstances can an employee complain to the Employment and Equality Tribunal?

If the dispute cannot be resolved, the employee may be able to make a complaint to the Employment and Equality Tribunal if he or she has grounds for doing so. An employee has grounds for making a complaint to the Tribunal if the employer:

- subjects the employee to a detriment in connection with adoption or paternity leave (see 7); or
- dismisses the employee (or unfairly selects him or her for redundancy) for reasons connected with adoption or paternity leave (see 7).

Employees should bear in mind that the time limit for making a complaint to the Employment and Equality Tribunal (see 4.3 below) will still apply and will not normally be extended because attempts have been made to settle the matter by means other than the Tribunal.

8.3 What is the procedure for making a complaint to the Employment and Equality Tribunal?

The complaint should normally be made within 3 months of the detrimental action, or 3 months of the effective date of dismissal. Where the detriment suffered is due to the employer's failure to act or provide a benefit, the complaint should be made within 3 months of the failure to act. An extension to the time limit can be granted only in exceptional circumstances, where the Tribunal is satisfied that it was not reasonably practicable for the complaint to have been made in time.

An employee who wishes to make a complaint to the Tribunal should contact the Clerk to the Employment and Equality Tribunal or MIRS. The complaint must be made in writing; a claim form may be obtained from the Clerk or MIRS.

When the Clerk to the Tribunal receives the completed complaint, he or she will send a copy to an Industrial Relations Officer at MIRS, who will try to help the two sides to reach a settlement of the dispute. If conciliation is not possible or fails, the Tribunal will hear the case, and both parties should attend the hearing. A party may claim travelling expenses and other expenses within certain limits.

Employment and Equality Tribunal hearings are conducted informally and in a way which makes it easy for the parties to present their own case if they wish to do so. However, if either party wants to be represented – whether by an advocate or by someone else such as an official of a trade union or employers' association, a relative or a friend – this is permitted.

8.4 What remedies can the Employment and Equality Tribunal give?

Where an employee complains that he or she has been subjected to a detriment and the Tribunal finds the complaint well-founded, it will make a declaration to that effect and may order the payment of compensation. It is for the Tribunal to decide the appropriate award, taking account of the employer's conduct and the loss suffered by the employee.

Where the Tribunal finds that the employee was unfairly dismissed or selected for redundancy, it will order payment of compensation, and may also order that the employee be reinstated or re-engaged. For further details of remedies in cases of unfair dismissal, see the DfE guide *'Isle of Man Employment Rights and Responsibilities – a Guide for Employers, Employees and Workers'*.

9. Other support and time off rights for adopters

9.1 What benefits and allowances other than adoption or paternity allowance may an employee be entitled to when adopting a child?

Employees should contact the Social Security Division of the Treasury to check their entitlement to other benefits when adopting a child. They should also check with the employer to see if they are entitled under the contract of employment to take time off with pay when adopting a child.

9.2 What time off rights do employees have apart from adoption leave and paternity leave when a child is placed for adoption with him or her?

Parental leave for parents of disabled children

Employees (both mothers and fathers) who have completed one year's service are entitled to take up to 18 weeks' leave before the child's eighteenth birthday, if the child has a disability. For further information, see the DfE booklet *Parental Leave for Parents of Disabled Children – A Guide*.

Right to request flexible working

Eligible employees (both fathers and mothers, and certain other carers) have the right to request flexible working. For further information, see the DfE guide *Flexible Working – The Right to Request and the Duty to Consider*.

Feedback

How helpful was this booklet to you? Did it answer your questions? Was it detailed enough? Was it clear? Does it contain any typographical errors? Do you have any comments or suggestions as to how the Department might improve future editions? Please email your feedback to emplaw@gov.im .

Annex 1: Matching Certificate

Matching Certificate: Adoption Leave

This Certificate when completed by the appropriate adoption agency, may be used as evidence for the purposes of statutory adoption leave. It confirms that the named person(s) has been matched with a child for adoption.

A Name and address of adoptive parent(s):

He or she was notified of this on:

It is expected that the child will be placed with him or her on:

The child has already been placed with him or her, this occurred on:

** delete as appropriate*

B Agency name and address:

Agency Stamp

This is an adoption agency within the meaning of the Adoption Act 1984

Name

Title

Signature

Date

Annex 2: Form to apply for Paternity Adoption Leave

Your dates for Leave

The adoption agency told the person adopting the child that he or she had been matched with the child on

The child is expected to be placed on

And, if the child has been placed, please enter the date he or she was placed

I want to be away from work for one/two* weeks (*delete as appropriate)

Your declaration

Surname

First Name

You must tick this box if you are adopting a child with your partner

I declare that I am adopting the child with my partner and I want to receive paternity leave and not adoption leave.

You must be able to tick all three boxes below to get paternity leave

I declare that

- I am either
 - married to the person adopting the child, or
 - living with the person adopting the child in an enduring family relationship, but not an immediate relative
- I shall have responsibility for the child's upbringing
- I shall take time off work to support the person adopting the child or care for the child

Signature and Date

Annex 3: Model letter for employers to acknowledge notification of adoption leave

This letter can be used when the minimum statutory leave is being taken. If other contractual levels of leave are being offered, the letter should be adapted accordingly or the employer's own paperwork should be used.

[Insert Date]

Dear [name of employee],

Congratulations and thank you for telling me that you will be adopting a child. I am writing to you about your adoption leave.

As we have discussed, you are eligible for 26/52* weeks' adoption leave [**delete as appropriate*]. Given your chosen start date of [*insert date*], your adoption leave will end on [*insert date*]. If you want to change the date your leave starts you must give me the correct notice, if at all possible. Please contact me if you wish to discuss this.

If you decide to return to work before [*insert date leave ends*], you must give me at least 28 day's notice. If you decide not to return to work, you must still give me proper notice.

You may be entitled to receive Adoption Allowance. For more details please contact the Social Security Division of the Treasury, Markwell House, Market Street, Douglas, IM1 2RZ, Tel: 01624 685105.

[If your organisation provides any pay during adoption leave - insert details here]

If you have any questions about any aspect of your adoption entitlement please do not hesitate to get in touch with me.

I wish you well.

Yours sincerely,

[Responsible manager]

Annex 4: Where to find further information

<i>Body</i>	<i>Function</i>
<p>The Manx Industrial Relations Service (MIRS)</p> <p>Ground Floor Imperial Buildings Bath Place Douglas Isle of Man IM1 2BY</p> <p>Tel.: 672942 E-mail: iro@mirs.org.im Web: www.mirs.org.im</p>	<p>Industrial Relations Officers (IROs) provide advice and guidance about employment rights and help to settle disputes between employers and workers.</p> <p>IROs will also attempt to promote a settlement where a complaint has been made or could be made to the Employment and Equality Tribunal.</p>
<p>Department for Enterprise website</p> <p>www.emplaw.gov.im</p>	<p>For information on employment rights, including various guides and Codes of Practice.</p>
<p>The Clerk to the Employment and Equality Tribunal</p> <p>The Office of the Tribunals' Centralised Administration Isle of Man Courts of Justice Deemsters Walk Bucks Road Douglas IM1 3AR</p> <p>Tel.: 685941 (Mon - Fri 9 a.m. to 5 p.m.) Fax: 685573 Email: tribunals@gov.im Web: www.courts.im/court-procedures/tribunals-service/tribunals/</p>	<p>This is the appropriate contact point where a claim to the Employment and Equality Tribunal has been made.</p> <p>(It is recommended that MIRS should be contacted where a claim has not been made or is being considered). (See above).</p>
<p>Health and Safety at Work Inspectorate</p> <p>Environment Safety and Health Directorate Department of Environment Food & Agriculture Thie Slieau Whallian Foxdale Road St. John's IM4 3AS</p>	<p>For guidance and enforcement in respect of health and safety issues.</p>

<p>Tel.: 685881 / 313626 (for urgent matters) Email: Worksafe.defa@gov.im Web: www.gov.im/hswi/</p>	
<p>Tel.:685108 E-mail: incapacityBenefits@gov.im Web: www.gov.im/categories/benefits-and-financial-support/</p>	<p>For information on Maternity Allowance, Paternity Allowance, Adoption Allowance and other family benefits.</p>
<p>Social Security Division of the Treasury The Treasury Markwell House Market Street Douglas IM1 2RZ</p> <p>Tel.: +44 1624 685105 Fax: +44 1624 685120 Email: generalbenefits@gov.im Web: www.gov.im/categories/benefits-and-financial-support/</p>	<p>For information on:</p> <ul style="list-style-type: none"> • Maternity Allowance, • Paternity Allowance, • Adoption Allowance, and • other family benefits.
<p>Isle of Man Legislation website www.legislation.gov.im/cms/</p>	<p>For current versions of Isle of Man Acts.</p>

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