

EMPLOYMENT RELATIONS ACT 1999

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Leave for family reasons

Section 8 and Part II of Schedule 4: Time off for dependants

181. This section and Part II of Schedule 4 insert new provisions after section 57 of the 1996 Act giving employees the right to take a reasonable amount of unpaid time off work to deal with specific matters affecting a dependant. This implements the part of the Parental Leave Directive not implemented by the parental leave provisions.

New section 57A: Right to time off for dependants

182. Under *new section 57A(1)* the employee has the right to time off:
- (paragraphs (a) and (b)) to help when a dependant falls ill, gives birth or is injured (including, under subsection (6), mental illness or injury);
 - (paragraph (c)) when a dependant dies;
 - (paragraph (d)) to cope when the arrangements for caring for a dependant unexpectedly break down; or
 - (paragraph (e)) to deal with an unexpected incident involving a dependent child during school hours, or on a school trip or in other circumstances when the school has responsibility for the child.
183. *Subsection (2)* provides that the right only applies if the employee, as soon as reasonably practicable, tells the employer why he or she is absent and (unless the employee is already back at work) for how long the absence is likely to last.
184. *Subsection (3)* defines ‘dependant’ as the employee’s parent, wife, husband or child, or someone who lives with the employee as part of the family, other than an employee or tenant etc. (This definition is taken from section 62(3)(c) of the Family Law Act 1996 and would include, for example, partners or elderly relatives living with the family). *Subsections (4) and (5)* provide that the dependant can also be someone who relies on the employee in the particular circumstances of an illness, accident or disruption of normal care arrangements.

New section 57B: Complaint to employment tribunal

185. This new section provides for enforcement through employment tribunals, following the precedent set in existing provisions conferring rights to time off (see, for example, sections 51 and 57 of the 1996 Act: complaints relating to time off for public duties or ante-natal care). As is usual for complaints to employment tribunals, a complaint must normally be made within three months. Where it is well-founded the tribunal is required to make a declaration to that effect, and may award compensation at a level which takes into account both the employer’s fault and the employee’s loss.