



# Employment Act 2002

## 2002 CHAPTER 22

### PART 1

#### STATUTORY LEAVE AND PAY

#### CHAPTER 1

#### PATERNITY AND ADOPTION

#### *Rights to leave and pay*

### 1 Paternity leave

In Part 8 of the Employment Rights Act 1996 (c. 18) (which makes provision for maternity and parental leave), after Chapter 2 there is inserted—

#### “CHAPTER 3

#### PATERNITY LEAVE

#### 80A Entitlement to paternity leave: birth

- (1) The Secretary of State shall make regulations entitling an employee who satisfies specified conditions—
  - (a) as to duration of employment,
  - (b) as to relationship with a newborn, or expected, child, and
  - (c) as to relationship with the child’s mother,to be absent from work on leave under this section for the purpose of caring for the child or supporting the mother.
- (2) The regulations shall include provision for determining—

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- (a) the extent of an employee’s entitlement to leave under this section in respect of a child;
  - (b) when leave under this section may be taken.
- (3) Provision under subsection (2)(a) shall secure that where an employee is entitled to leave under this section in respect of a child he is entitled to at least two weeks’ leave.
- (4) Provision under subsection (2)(b) shall secure that leave under this section must be taken before the end of a period of at least 56 days beginning with the date of the child’s birth.
- (5) Regulations under subsection (1) may—
- (a) specify things which are, or are not, to be taken as done for the purpose of caring for a child or supporting the child’s mother;
  - (b) make provision excluding the right to be absent on leave under this section in respect of a child where more than one child is born as a result of the same pregnancy;
  - (c) make provision about how leave under this section may be taken.
- (6) Where more than one child is born as a result of the same pregnancy, the reference in subsection (4) to the date of the child’s birth shall be read as a reference to the date of birth of the first child born as a result of the pregnancy.
- (7) In this section—
- “newborn child” includes a child stillborn after twenty-four weeks of pregnancy;
  - “week” means any period of seven days.

#### **80B Entitlement to paternity leave: adoption**

- (1) The Secretary of State shall make regulations entitling an employee who satisfies specified conditions—
- (a) as to duration of employment,
  - (b) as to relationship with a child placed, or expected to be placed, for adoption under the law of any part of the United Kingdom, and
  - (c) as to relationship with a person with whom the child is, or is expected to be, so placed for adoption,
- to be absent from work on leave under this section for the purpose of caring for the child or supporting the person by reference to whom he satisfies the condition under paragraph (c).
- (2) The regulations shall include provision for determining—
- (a) the extent of an employee’s entitlement to leave under this section in respect of a child;
  - (b) when leave under this section may be taken.
- (3) Provision under subsection (2)(a) shall secure that where an employee is entitled to leave under this section in respect of a child he is entitled to at least two weeks’ leave.

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- (4) Provision under subsection (2)(b) shall secure that leave under this section must be taken before the end of a period of at least 56 days beginning with the date of the child's placement for adoption.
- (5) Regulations under subsection (1) may—
  - (a) specify things which are, or are not, to be taken as done for the purpose of caring for a child or supporting a person with whom a child is placed for adoption;
  - (b) make provision excluding the right to be absent on leave under this section in the case of an employee who exercises a right to be absent from work on adoption leave;
  - (c) make provision excluding the right to be absent on leave under this section in respect of a child where more than one child is placed for adoption as part of the same arrangement;
  - (d) make provision about how leave under this section may be taken.
- (6) Where more than one child is placed for adoption as part of the same arrangement, the reference in subsection (4) to the date of the child's placement shall be read as a reference to the date of placement of the first child to be placed as part of the arrangement.
- (7) In this section, "week" means any period of seven days.
- (8) The Secretary of State may by regulations provide for this section to have effect in relation to cases which involve adoption, but not the placement of a child for adoption under the law of any part of the United Kingdom, with such modifications as the regulations may prescribe.

## **80C Rights during and after paternity leave**

- (1) Regulations under section 80A shall provide—
  - (a) that an employee who is absent on leave under that section is entitled, for such purposes and to such extent as the regulations may prescribe, to the benefit of the terms and conditions of employment which would have applied if he had not been absent;
  - (b) that an employee who is absent on leave under that section is bound, for such purposes and to such extent as the regulations may prescribe, by obligations arising under those terms and conditions (except in so far as they are inconsistent with subsection (1) of that section), and
  - (c) that an employee who is absent on leave under that section is entitled to return from leave to a job of a kind prescribed by regulations, subject to section 80D(1).
- (2) The reference in subsection (1)(c) to absence on leave under section 80A includes, where appropriate, a reference to a continuous period of absence attributable partly to leave under that section and partly to any one or more of the following—
  - (a) maternity leave,
  - (b) adoption leave, and
  - (c) parental leave.

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- (3) Subsection (1) shall apply to regulations under section 80B as it applies to regulations under section 80A.
- (4) In the application of subsection (1)(c) to regulations under section 80B, the reference to absence on leave under that section includes, where appropriate, a reference to a continuous period of absence attributable partly to leave under that section and partly to any one or more of the following—
  - (a) maternity leave,
  - (b) adoption leave,
  - (c) parental leave, and
  - (d) leave under section 80A.
- (5) In subsection (1)(a), “terms and conditions of employment”—
  - (a) includes matters connected with an employee’s employment whether or not they arise under his contract of employment, but
  - (b) does not include terms and conditions about remuneration.
- (6) Regulations under section 80A or 80B may specify matters which are, or are not, to be treated as remuneration for the purposes of this section.
- (7) Regulations under section 80A or 80B may make provision, in relation to the right to return mentioned in subsection (1)(c), about—
  - (a) seniority, pension rights and similar rights;
  - (b) terms and conditions of employment on return.

#### 80D Special cases

- (1) Regulations under section 80A or 80B may make provision about—
  - (a) redundancy, or
  - (b) dismissal (other than by reason of redundancy),
 during a period of leave under that section.
- (2) Provision by virtue of subsection (1) may include—
  - (a) provision requiring an employer to offer alternative employment;
  - (b) provision for the consequences of failure to comply with the regulations (which may include provision for a dismissal to be treated as unfair for the purposes of Part 10).

#### 80E Chapter 3: supplemental

Regulations under section 80A or 80B may—

- (a) make provision about notices to be given, evidence to be produced and other procedures to be followed by employees and employers;
- (b) make provision requiring employers or employees to keep records;
- (c) make provision for the consequences of failure to give notices, to produce evidence, to keep records or to comply with other procedural requirements;
- (d) make provision for the consequences of failure to act in accordance with a notice given by virtue of paragraph (a);

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- (e) make special provision for cases where an employee has a right which corresponds to a right under section 80A or 80B and which arises under his contract of employment or otherwise;
- (f) make provision modifying the effect of Chapter 2 of Part 14 (calculation of a week's pay) in relation to an employee who is or has been absent from work on leave under section 80A or 80B;
- (g) make provision applying, modifying or excluding an enactment, in such circumstances as may be specified and subject to any conditions which may be specified, in relation to a person entitled to take leave under section 80A or 80B;
- (h) make different provision for different cases or circumstances.”

## 2 Statutory paternity pay

In the Social Security Contributions and Benefits Act 1992 (c. 4), after Part 12 (statutory maternity pay) there is inserted—

### “PART 12ZA

#### STATUTORY PATERNITY PAY

##### 171ZA Entitlement: birth

- (1) Where a person satisfies the conditions in subsection (2) below, he shall be entitled in accordance with the following provisions of this Part to payments to be known as “statutory paternity pay”.
- (2) The conditions are—
  - (a) that he satisfies prescribed conditions—
    - (i) as to relationship with a newborn child, and
    - (ii) as to relationship with the child's mother;
  - (b) that he has been in employed earner's employment with an employer for a continuous period of at least 26 weeks ending with the relevant week;
  - (c) that his normal weekly earnings for the period of 8 weeks ending with the relevant week are not less than the lower earnings limit in force under section 5(1)(a) above at the end of the relevant week; and
  - (d) that he has been in employed earner's employment with the employer by reference to whom the condition in paragraph (b) above is satisfied for a continuous period beginning with the end of the relevant week and ending with the day on which the child is born.
- (3) The references in subsection (2) above to the relevant week are to the week immediately preceding the 14th week before the expected week of the child's birth.
- (4) A person's entitlement to statutory paternity pay under this section shall not be affected by the birth, or expected birth, of more than one child as a result of the same pregnancy.

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- (5) In this section, “newborn child” includes a child stillborn after twenty-four weeks of pregnancy.

#### **171ZB Entitlement: adoption**

- (1) Where a person satisfies the conditions in subsection (2) below, he shall be entitled in accordance with the following provisions of this Part to payments to be known as “statutory paternity pay”.
- (2) The conditions are—
- (a) that he satisfies prescribed conditions—
    - (i) as to relationship with a child who is placed for adoption under the law of any part of the United Kingdom, and
    - (ii) as to relationship with a person with whom the child is so placed for adoption;
  - (b) that he has been in employed earner’s employment with an employer for a continuous period of at least 26 weeks ending with the relevant week;
  - (c) that his normal weekly earnings for the period of 8 weeks ending with the relevant week are not less than the lower earnings limit in force under section 5(1)(a) at the end of the relevant week;
  - (d) that he has been in employed earner’s employment with the employer by reference to whom the condition in paragraph (b) above is satisfied for a continuous period beginning with the end of the relevant week and ending with the day on which the child is placed for adoption; and
  - (e) where he is a person with whom the child is placed for adoption, that he has elected to receive statutory paternity pay.
- (3) The references in subsection (2) to the relevant week are to the week in which the adopter is notified of being matched with the child for the purposes of adoption.
- (4) A person may not elect to receive statutory paternity pay if he has elected in accordance with section 171ZL below to receive statutory adoption pay.
- (5) Regulations may make provision about elections for the purposes of subsection (2)(e) above.
- (6) A person’s entitlement to statutory paternity pay under this section shall not be affected by the placement for adoption of more than one child as part of the same arrangement.
- (7) In this section, “adopter”, in relation to a person who satisfies the condition under subsection (2)(a)(ii) above, means the person by reference to whom he satisfies that condition.

#### **171ZC Entitlement: general**

- (1) A person shall be entitled to payments of statutory paternity pay in respect of any period only if—

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- (a) he gives the person who will be liable to pay it notice of the date from which he expects the liability to pay him statutory paternity pay to begin; and
  - (b) the notice is given at least 28 days before that date or, if that is not reasonably practicable, as soon as is reasonably practicable.
- (2) The notice shall be in writing if the person who is liable to pay the statutory paternity pay so requests.
- (3) The Secretary of State may by regulations—
- (a) provide that subsection (2)(b), (c) or (d) of section 171ZA or 171ZB above shall have effect subject to prescribed modifications in such cases as may be prescribed;
  - (b) provide that subsection (1) above shall not have effect, or shall have effect subject to prescribed modifications, in such cases as may be prescribed;
  - (c) impose requirements about evidence of entitlement;
  - (d) specify in what circumstances employment is to be treated as continuous for the purposes of section 171ZA or 171ZB above;
  - (e) provide that a person is to be treated for the purposes of section 171ZA or 171ZB above as being employed for a continuous period of at least 26 weeks where—
    - (i) he has been employed by the same employer for at least 26 weeks under two or more separate contracts of service; and
    - (ii) those contracts were not continuous;
  - (f) provide for amounts earned by a person under separate contracts of service with the same employer to be aggregated for the purposes of section 171ZA or 171ZB above;
  - (g) provide that—
    - (i) the amount of a person’s earnings for any period, or
    - (ii) the amount of his earnings to be treated as comprised in any payment made to him or for his benefit,shall be calculated or estimated for the purposes of section 171ZA or 171ZB above in such manner and on such basis as may be prescribed and that for that purpose payments of a particular class or description made or falling to be made to or by a person shall, to such extent as may be prescribed, be disregarded or, as the case may be, be deducted from the amount of his earnings.

### **171ZD Liability to make payments**

- (1) The liability to make payments of statutory paternity pay under section 171ZA or 171ZB above is a liability of any person of whom the person entitled to the payments has been an employee as mentioned in subsection (2)(b) and (d) of that section.
- (2) Regulations shall make provision as to a former employer’s liability to pay statutory paternity pay to a person in any case where the former employee’s contract of service with him has been brought to an end by the former employer solely, or mainly, for the purpose of avoiding liability for statutory paternity pay.

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- (3) The Secretary of State may, with the concurrence of the Board, by regulations specify circumstances in which, notwithstanding this section, liability to make payments of statutory paternity pay is to be a liability of the Board.

#### **171ZE Rate and period of pay**

- (1) Statutory paternity pay shall be payable at such fixed or earnings-related weekly rate as may be prescribed by regulations, which may prescribe different kinds of rate for different cases.
- (2) Statutory paternity pay shall be payable in respect of—
- (a) a period of two consecutive weeks within the qualifying period beginning on such date within that period as the person entitled may choose in accordance with regulations, or
  - (b) if regulations permit the person entitled to choose to receive statutory paternity pay in respect of—
    - (i) a period of a week, or
    - (ii) two non-consecutive periods of a week,
 such week or weeks within the qualifying period as he may choose in accordance with regulations.
- (3) For the purposes of subsection (2) above, the qualifying period shall be determined in accordance with regulations, which shall secure that it is a period of at least 56 days beginning—
- (a) in the case of a person to whom the conditions in section 171ZA(2) above apply, with the date of the child's birth, and
  - (b) in the case of a person to whom the conditions in section 171ZB(2) above apply, with the date of the child's placement for adoption.
- (4) Statutory paternity pay shall not be payable to a person in respect of a statutory pay week if it is not his purpose at the beginning of the week—
- (a) to care for the child by reference to whom he satisfies the condition in sub-paragraph (i) of section 171ZA(2)(a) or 171ZB(2)(a) above, or
  - (b) to support the person by reference to whom he satisfies the condition in sub-paragraph (ii) of that provision.
- (5) A person shall not be liable to pay statutory paternity pay to another in respect of a statutory pay week during any part of which the other works under a contract of service with him.
- (6) It is immaterial for the purposes of subsection (5) above whether the work referred to in that subsection is work under a contract of service which existed immediately before the statutory pay week or a contract of service which did not so exist.
- (7) Except in such cases as may be prescribed, statutory paternity pay shall not be payable to a person in respect of a statutory pay week during any part of which he works for any employer who is not liable to pay him statutory paternity pay.
- (8) The Secretary of State may by regulations specify circumstances in which there is to be no liability to pay statutory paternity pay in respect of a statutory pay week.



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- (9) Where more than one child is born as a result of the same pregnancy, the reference in subsection (3)(a) to the date of the child’s birth shall be read as a reference to the date of birth of the first child born as a result of the pregnancy.
- (10) Where more than one child is placed for adoption as part of the same arrangement, the reference in subsection (3)(b) to the date of the child’s placement shall be read as a reference to the date of placement of the first child to be placed as part of the arrangement.
- (11) In this section—
- “statutory pay week”, in relation to a person entitled to statutory paternity pay, means a week chosen by him as a week in respect of which statutory paternity pay shall be payable;
- “week” means any period of seven days.

#### **171ZF Restrictions on contracting out**

- (1) Any agreement shall be void to the extent that it purports—
- (a) to exclude, limit or otherwise modify any provision of this Part of this Act, or
  - (b) to require an employee or former employee to contribute (whether directly or indirectly) towards any costs incurred by his employer or former employer under this Part of this Act.
- (2) For the avoidance of doubt, any agreement between an employer and an employee authorising any deductions from statutory paternity pay which the employer is liable to pay to the employee in respect of any period shall not be void by virtue of subsection (1)(a) above if the employer—
- (a) is authorised by that or another agreement to make the same deductions from any contractual remuneration which he is liable to pay in respect of the same period, or
  - (b) would be so authorised if he were liable to pay contractual remuneration in respect of that period.

#### **171ZG Relationship with contractual remuneration**

- (1) Subject to subsections (2) and (3) below, any entitlement to statutory paternity pay shall not affect any right of a person in relation to remuneration under any contract of service (“contractual remuneration”).
- (2) Subject to subsection (3) below—
- (a) any contractual remuneration paid to a person by an employer of his in respect of any period shall go towards discharging any liability of that employer to pay statutory paternity pay to him in respect of that period; and
  - (b) any statutory paternity pay paid by an employer to a person who is an employee of his in respect of any period shall go towards discharging any liability of that employer to pay contractual remuneration to him in respect of that period.

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- (3) Regulations may make provision as to payments which are, and those which are not, to be treated as contractual remuneration for the purposes of subsections (1) and (2) above.

#### **171ZH Crown employment-Part 12ZA**

The provisions of this Part of this Act apply in relation to persons employed by or under the Crown as they apply in relation to persons employed otherwise than by or under the Crown.

#### **171ZI Special classes of person**

- (1) The Secretary of State may with the concurrence of the Treasury make regulations modifying any provision of this Part of this Act in such manner as he thinks proper in its application to any person who is, has been or is to be—
- (a) employed on board any ship, vessel, hovercraft or aircraft;
  - (b) outside Great Britain at any prescribed time or in any prescribed circumstances; or
  - (c) in prescribed employment in connection with continental shelf operations, as defined in section 120(2) above.
- (2) Regulations under subsection (1) above may, in particular, provide—
- (a) for any provision of this Part of this Act to apply to any such person, notwithstanding that it would not otherwise apply;
  - (b) for any such provision not to apply to any such person, notwithstanding that it would otherwise apply;
  - (c) for excepting any such person from the application of any such provision where he neither is domiciled nor has a place of residence in any part of Great Britain;
  - (d) for the taking of evidence, for the purposes of the determination of any question arising under any such provision, in a country or territory outside Great Britain, by a British consular official or such other person as may be determined in accordance with the regulations.

#### **171ZJ Part 12ZA: supplementary**

- (1) In this Part of this Act—
- “the Board” means the Commissioners of Inland Revenue;
- “employer”, in relation to a person who is an employee, means a person who under section 6 above is, or but for the condition in subsection (1)(b) of that section would be, liable to pay secondary Class 1 contributions in relation to any of the earnings of the person who is an employee;
- “modifications” includes additions, omissions and amendments, and related expressions are to be read accordingly;
- “prescribed” means prescribed by regulations.
- (2) In this Part of this Act, “employee” means a person who is—

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- (a) gainfully employed in Great Britain either under a contract of service or in an office (including elective office) with emoluments chargeable to income tax under Schedule E; and
  - (b) over the age of 16.
- (3) Regulations may provide—
- (a) for cases where a person who falls within the definition in subsection (2) above is not to be treated as an employee for the purposes of this Part of this Act, and
  - (b) for cases where a person who would not otherwise be an employee for the purposes of this Part of this Act is to be treated as an employee for those purposes.
- (4) Without prejudice to any other power to make regulations under this Part of this Act, regulations may specify cases in which, for the purposes of this Part of this Act or of such provisions of this Part of this Act as may be prescribed—
- (a) two or more employers are to be treated as one;
  - (b) two or more contracts of service in respect of which the same person is an employee are to be treated as one.
- (5) In this Part, except section 171ZE, “week” means a period of 7 days beginning with Sunday or such other period as may be prescribed in relation to any particular case or class of cases.
- (6) For the purposes of this Part of this Act, a person’s normal weekly earnings shall, subject to subsection (8) below, be taken to be the average weekly earnings which in the relevant period have been paid to him or paid for his benefit under the contract of service with the employer in question.
- (7) For the purposes of subsection (6) above, “earnings” and “relevant period” shall have the meanings given to them by regulations.
- (8) In such cases as may be prescribed, a person’s normal weekly earnings shall be calculated in accordance with regulations.
- (9) Where—
- (a) in consequence of the establishment of one or more National Health Service trusts under Part 1 of the National Health Service and Community Care Act 1990 (c. 19) or the National Health Service (Scotland) Act 1978 (c. 29), a person’s contract of employment is treated by a scheme under that Part or Act as divided so as to constitute two or more contracts, or
  - (b) an order under paragraph 23(1) of Schedule 5A to the National Health Service Act 1977 (c. 49) provides that a person’s contract of employment is so divided,
- regulations may make provision enabling the person to elect for all of those contracts to be treated as one contract for the purposes of this Part of this Act or such provisions of this Part of this Act as may be prescribed.
- (10) Regulations under subsection (9) above may prescribe—
- (a) the conditions that must be satisfied if a person is to be entitled to make such an election;
  - (b) the manner in which, and the time within which, such an election is to be made;

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- (c) the persons to whom, and the manner in which, notice of such an election is to be given;
  - (d) the information which a person who makes such an election is to provide, and the persons to whom, and the time within which, he is to provide it;
  - (e) the time for which such an election is to have effect;
  - (f) which one of the person’s employers under two or more contracts is to be regarded for the purposes of statutory paternity pay as his employer under the contract.
- (11) The powers under subsections (9) and (10) are without prejudice to any other power to make regulations under this Part of this Act.
- (12) Regulations under any of subsections (4) to (10) above must be made with the concurrence of the Board.

#### **171ZK Power to apply Part 12ZA to adoption cases not involving placement**

The Secretary of State may by regulations provide for this Part to have effect in relation to cases which involve adoption, but not the placement of a child for adoption under the law of any part of the United Kingdom, with such modifications as the regulations may prescribe.”

### **3 Adoption leave**

In Part 8 of the Employment Rights Act 1996 (c. 18), after Chapter 1 there is inserted—

#### **“CHAPTER 1A**

#### **ADOPTION LEAVE**

##### **75A Ordinary adoption leave**

- (1) An employee who satisfies prescribed conditions may be absent from work at any time during an ordinary adoption leave period.
- (2) An ordinary adoption leave period is a period calculated in accordance with regulations made by the Secretary of State.
- (3) Subject to section 75C, an employee who exercises his right under subsection (1)—
  - (a) is entitled, for such purposes and to such extent as may be prescribed, to the benefit of the terms and conditions of employment which would have applied if he had not been absent,
  - (b) is bound, for such purposes and to such extent as may be prescribed, by any obligations arising under those terms and conditions (except in so far as they are inconsistent with subsection (1)), and
  - (c) is entitled to return from leave to a job of a prescribed kind.
- (4) In subsection (3)(a) “terms and conditions of employment”—
  - (a) includes matters connected with an employee’s employment whether or not they arise under his contract of employment, but

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(b) does not include terms and conditions about remuneration.

- (5) In subsection (3)(c), the reference to return from leave includes, where appropriate, a reference to a continuous period of absence attributable partly to ordinary adoption leave and partly to maternity leave.
- (6) The Secretary of State may make regulations specifying matters which are, or are not, to be treated as remuneration for the purposes of this section.
- (7) The Secretary of State may make regulations making provision, in relation to the right to return under subsection (3)(c), about—
- (a) seniority, pension rights and similar rights;
  - (b) terms and conditions of employment on return.

#### **75B Additional adoption leave**

- (1) An employee who satisfies prescribed conditions may be absent from work at any time during an additional adoption leave period.
- (2) An additional adoption leave period is a period calculated in accordance with regulations made by the Secretary of State.
- (3) Regulations under subsection (2) may allow an employee to choose, subject to prescribed restrictions, the date on which an additional adoption leave period ends.
- (4) Subject to section 75C, an employee who exercises his right under subsection (1)—
- (a) is entitled, for such purposes and to such extent as may be prescribed, to the benefit of the terms and conditions of employment which would have applied if he had not been absent,
  - (b) is bound, for such purposes and to such extent as may be prescribed, by obligations arising under those terms and conditions (except in so far as they are inconsistent with subsection (1)), and
  - (c) is entitled to return from leave to a job of a prescribed kind.
- (5) In subsection (4)(a) “terms and conditions of employment”—
- (a) includes matters connected with an employee’s employment whether or not they arise under his contract of employment, but
  - (b) does not include terms and conditions about remuneration.
- (6) In subsection (4)(c), the reference to return from leave includes, where appropriate, a reference to a continuous period of absence attributable partly to additional adoption leave and partly to—
- (a) maternity leave, or
  - (b) ordinary adoption leave,
- or to both.
- (7) The Secretary of State may make regulations specifying matters which are, or are not, to be treated as remuneration for the purposes of this section.
- (8) The Secretary of State may make regulations making provision, in relation to the right to return under subsection (4)(c), about—
- (a) seniority, pension rights and similar rights;

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- (b) terms and conditions of employment on return.

### 75C Redundancy and dismissal

- (1) Regulations under section 75A or 75B may make provision about—
  - (a) redundancy, or
  - (b) dismissal (other than by reason of redundancy),
 during an ordinary or additional adoption leave period.
- (2) Regulations made by virtue of subsection (1) may include—
  - (a) provision requiring an employer to offer alternative employment;
  - (b) provision for the consequences of failure to comply with the regulations (which may include provision for a dismissal to be treated as unfair for the purposes of Part 10).
- (3) Regulations under section 75A or 75B may make provision—
  - (a) for section 75A(3)(c) or 75B(4)(c) not to apply in specified cases, and
  - (b) about dismissal at the conclusion of an ordinary or additional adoption leave period.

### 75D Chapter 1A: supplemental

- (1) Regulations under section 75A or 75B may—
  - (a) make provision about notices to be given, evidence to be produced and other procedures to be followed by employees and employers;
  - (b) make provision requiring employers or employees to keep records;
  - (c) make provision for the consequences of failure to give notices, to produce evidence, to keep records or to comply with other procedural requirements;
  - (d) make provision for the consequences of failure to act in accordance with a notice given by virtue of paragraph (a);
  - (e) make special provision for cases where an employee has a right which corresponds to a right under this Chapter and which arises under his contract of employment or otherwise;
  - (f) make provision modifying the effect of Chapter 2 of Part 14 (calculation of a week's pay) in relation to an employee who is or has been absent from work on ordinary or additional adoption leave;
  - (g) make provision applying, modifying or excluding an enactment, in such circumstances as may be specified and subject to any conditions specified, in relation to a person entitled to ordinary or additional adoption leave;
  - (h) make different provision for different cases or circumstances.
- (2) In sections 75A and 75B “prescribed” means prescribed by regulations made by the Secretary of State.”

## 4 Statutory adoption pay

In the Social Security Contributions and Benefits Act 1992 (c. 4), after Part 12ZA there is inserted—

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## “PART 12ZB

### STATUTORY ADOPTION PAY

#### 171ZL Entitlement

- (1) Where a person who is, or has been, an employee satisfies the conditions in subsection (2) below, he shall be entitled in accordance with the following provisions of this Part to payments to be known as “statutory adoption pay”.
- (2) The conditions are—
  - (a) that he is a person with whom a child is, or is expected to be, placed for adoption under the law of any part of the United Kingdom;
  - (b) that he has been in employed earner’s employment with an employer for a continuous period of at least 26 weeks ending with the relevant week;
  - (c) that he has ceased to work for the employer;
  - (d) that his normal weekly earnings for the period of 8 weeks ending with the relevant week are not less than the lower earnings limit in force under section 5(1)(a) at the end of the relevant week; and
  - (e) that he has elected to receive statutory adoption pay.
- (3) The references in subsection (2)(b) and (d) above to the relevant week are to the week in which the person is notified that he has been matched with the child for the purposes of adoption.
- (4) A person may not elect to receive statutory adoption pay if—
  - (a) he has elected in accordance with section 171ZB above to receive statutory paternity pay, or
  - (b) where the child is, or is expected to be, placed for adoption with him as a member of a married couple and his spouse is a person to whom the conditions in subsection (2) above apply, his spouse has elected to receive statutory adoption pay.
- (5) A person’s entitlement to statutory adoption pay shall not be affected by the placement, or expected placement, for adoption of more than one child as part of the same arrangement.
- (6) A person shall be entitled to payments of statutory adoption pay only if—
  - (a) he gives the person who will be liable to pay it notice of the date from which he expects the liability to pay him statutory adoption pay to begin; and
  - (b) the notice is given at least 28 days before that date or, if that is not reasonably practicable, as soon as is reasonably practicable.
- (7) The notice shall be in writing if the person who is liable to pay the statutory adoption pay so requests.
- (8) The Secretary of State may by regulations—
  - (a) provide that subsection (2)(b), (c) or (d) above shall have effect subject to prescribed modifications in such cases as may be prescribed;

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- (b) provide that subsection (6) above shall not have effect, or shall have effect subject to prescribed modifications, in such cases as may be prescribed;
- (c) impose requirements about evidence of entitlement;
- (d) specify in what circumstances employment is to be treated as continuous for the purposes of this section;
- (e) provide that a person is to be treated for the purposes of this section as being employed for a continuous period of at least 26 weeks where—
  - (i) he has been employed by the same employer for at least 26 weeks under two or more separate contracts of service; and
  - (ii) those contracts were not continuous;
- (f) provide for amounts earned by a person under separate contracts of service with the same employer to be aggregated for the purposes of this section;
- (g) provide that—
  - (i) the amount of a person’s earnings for any period, or
  - (ii) the amount of his earnings to be treated as comprised in any payment made to him or for his benefit,
 shall be calculated or estimated for the purposes of this section in such manner and on such basis as may be prescribed and that for that purpose payments of a particular class or description made or falling to be made to or by a person shall, to such extent as may be prescribed, be disregarded or, as the case may be, be deducted from the amount of his earnings;
- (h) make provision about elections for statutory adoption pay.

#### **171ZM Liability to make payments**

- (1) The liability to make payments of statutory adoption pay is a liability of any person of whom the person entitled to the payments has been an employee as mentioned in section 171ZL(2)(b) above.
- (2) Regulations shall make provision as to a former employer’s liability to pay statutory adoption pay to a person in any case where the former employee’s contract of service with him has been brought to an end by the former employer solely, or mainly, for the purpose of avoiding liability for statutory adoption pay.
- (3) The Secretary of State may, with the concurrence of the Board, by regulations specify circumstances in which, notwithstanding this section, liability to make payments of statutory adoption pay is to be a liability of the Board.

#### **171ZN Rate and period of pay**

- (1) Statutory adoption pay shall be payable at such fixed or earnings-related weekly rate as the Secretary of State may prescribe by regulations, which may prescribe different kinds of rate for different cases.
- (2) Statutory adoption pay shall be payable, subject to the provisions of this Part of this Act, in respect of each week during a prescribed period (“the adoption pay period”) of a duration not exceeding 26 weeks.



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- (3) A person shall not be liable to pay statutory adoption pay to another in respect of any week during any part of which the other works under a contract of service with him.
- (4) It is immaterial for the purposes of subsection (3) above whether the work referred to in that subsection is work under a contract of service which existed immediately before the adoption pay period or a contract of service which did not so exist.
- (5) Except in such cases as may be prescribed, statutory adoption pay shall not be payable to a person in respect of any week during any part of which he works for any employer who is not liable to pay him statutory adoption pay.
- (6) The Secretary of State may by regulations specify circumstances in which there is to be no liability to pay statutory adoption pay in respect of a week.
- (7) In subsection (2) above, “week” means any period of seven days.
- (8) In subsections (3), (5) and (6) above, “week” means a period of seven days beginning with the day of the week on which the adoption pay period begins.

#### **171ZO Restrictions on contracting out**

- (1) Any agreement shall be void to the extent that it purports—
  - (a) to exclude, limit or otherwise modify any provision of this Part of this Act, or
  - (b) to require an employee or former employee to contribute (whether directly or indirectly) towards any costs incurred by his employer or former employer under this Part of this Act.
- (2) For the avoidance of doubt, any agreement between an employer and an employee authorising any deductions from statutory adoption pay which the employer is liable to pay to the employee in respect of any period shall not be void by virtue of subsection (1)(a) above if the employer—
  - (a) is authorised by that or another agreement to make the same deductions from any contractual remuneration which he is liable to pay in respect of the same period, or
  - (b) would be so authorised if he were liable to pay contractual remuneration in respect of that period.

#### **171ZP Relationship with benefits and other payments etc**

- (1) Except as may be prescribed, a day which falls within the adoption pay period shall not be treated as a day of incapacity for work for the purposes of determining, for this Act, whether it forms part of a period of incapacity for work for the purposes of incapacity benefit.
- (2) Regulations may provide that in prescribed circumstances a day which falls within the adoption pay period shall be treated as a day of incapacity for work for the purposes of determining entitlement to the higher rate of short-term incapacity benefit or to long-term incapacity benefit.
- (3) Regulations may provide that an amount equal to a person’s statutory adoption pay for a period shall be deducted from any such benefit in respect of the same

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period and a person shall be entitled to such benefit only if there is a balance after the deduction and, if there is such a balance, at a weekly rate equal to it.

- (4) Subject to subsections (5) and (6) below, any entitlement to statutory adoption pay shall not affect any right of a person in relation to remuneration under any contract of service (“contractual remuneration”).
- (5) Subject to subsection (6) below—
  - (a) any contractual remuneration paid to a person by an employer of his in respect of a week in the adoption pay period shall go towards discharging any liability of that employer to pay statutory adoption pay to him in respect of that week; and
  - (b) any statutory adoption pay paid by an employer to a person who is an employee of his in respect of a week in the adoption pay period shall go towards discharging any liability of that employer to pay contractual remuneration to him in respect of that week.
- (6) Regulations may make provision as to payments which are, and those which are not, to be treated as contractual remuneration for the purposes of subsections (4) and (5) above.
- (7) In subsection (5) above, “week” means a period of seven days beginning with the day of the week on which the adoption pay period begins.

#### **171ZQ Crown employment-Part 12ZB**

The provisions of this Part of this Act apply in relation to persons employed by or under the Crown as they apply in relation to persons employed otherwise than by or under the Crown.

#### **171ZR Special classes of person**

- (1) The Secretary of State may with the concurrence of the Treasury make regulations modifying any provision of this Part of this Act in such manner as he thinks proper in its application to any person who is, has been or is to be—
  - (a) employed on board any ship, vessel, hovercraft or aircraft;
  - (b) outside Great Britain at any prescribed time or in any prescribed circumstances; or
  - (c) in prescribed employment in connection with continental shelf operations, as defined in section 120(2) above.
- (2) Regulations under subsection (1) above may, in particular, provide—
  - (a) for any provision of this Part of this Act to apply to any such person, notwithstanding that it would not otherwise apply;
  - (b) for any such provision not to apply to any such person, notwithstanding that it would otherwise apply;
  - (c) for excepting any such person from the application of any such provision where he neither is domiciled nor has a place of residence in any part of Great Britain;
  - (d) for the taking of evidence, for the purposes of the determination of any question arising under any such provision, in a country or territory outside Great Britain, by a British consular official or such other person as may be determined in accordance with the regulations.

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### 171ZS Part 12ZB: supplementary

- (1) In this Part of this Act—
  - “adoption pay period” has the meaning given by section 171ZN(2) above;
  - “the Board” means the Commissioners of Inland Revenue;
  - “employer”, in relation to a person who is an employee, means a person who under section 6 above is, or but for the condition in subsection (1)(b) of that section would be, liable to pay secondary Class 1 contributions in relation to any of the earnings of the person who is an employee;
  - “modifications” includes additions, omissions and amendments, and related expressions are to be read accordingly;
  - “prescribed” means prescribed by regulations.
- (2) In this Part of this Act, “employee” means a person who is—
  - (a) gainfully employed in Great Britain either under a contract of service or in an office (including elective office) with emoluments chargeable to income tax under Schedule E; and
  - (b) over the age of 16.
- (3) Regulations may provide—
  - (a) for cases where a person who falls within the definition in subsection (2) above is not to be treated as an employee for the purposes of this Part of this Act, and
  - (b) for cases where a person who would not otherwise be an employee for the purposes of this Part of this Act is to be treated as an employee for those purposes.
- (4) Without prejudice to any other power to make regulations under this Part of this Act, regulations may specify cases in which, for the purposes of this Part of this Act or of such provisions of this Part of this Act as may be prescribed—
  - (a) two or more employers are to be treated as one;
  - (b) two or more contracts of service in respect of which the same person is an employee are to be treated as one.
- (5) In this Part, except sections 171ZN and 171ZP, “week” means a period of 7 days beginning with Sunday or such other period as may be prescribed in relation to any particular case or class of cases.
- (6) For the purposes of this Part of this Act, a person’s normal weekly earnings shall, subject to subsection (8) below, be taken to be the average weekly earnings which in the relevant period have been paid to him or paid for his benefit under the contract of service with the employer in question.
- (7) For the purposes of subsection (6) above, “earnings” and “relevant period” shall have the meanings given to them by regulations.
- (8) In such cases as may be prescribed, a person’s normal weekly earnings shall be calculated in accordance with regulations.
- (9) Where—

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- (a) in consequence of the establishment of one or more National Health Service trusts under Part 1 of the National Health Service and Community Care Act 1990 (c. 19) or the National Health Service (Scotland) Act 1978 (c. 29), a person's contract of employment is treated by a scheme under that Part or Act as divided so as to constitute two or more contracts, or
- (b) an order under paragraph 23(1) of Schedule 5A to the National Health Service Act 1977 (c. 49) provides that a person's contract of employment is so divided,

regulations may make provision enabling the person to elect for all of those contracts to be treated as one contract for the purposes of this Part of this Act or such provisions of this Part of this Act as may be prescribed.

- (10) Regulations under subsection (9) above may prescribe—
  - (a) the conditions that must be satisfied if a person is to be entitled to make such an election;
  - (b) the manner in which, and the time within which, such an election is to be made;
  - (c) the persons to whom, and the manner in which, notice of such an election is to be given;
  - (d) the information which a person who makes such an election is to provide, and the persons to whom, and the time within which, he is to provide it;
  - (e) the time for which such an election is to have effect;
  - (f) which one of the person's employers under two or more contracts is to be regarded for the purposes of statutory adoption pay as his employer under the contract.
- (11) The powers under subsections (9) and (10) are without prejudice to any other power to make regulations under this Part of this Act.
- (12) Regulations under any of subsections (4) to (10) above must be made with the concurrence of the Board.

#### **171ZT Power to apply Part 12ZB to adoption cases not involving placement**

The Secretary of State may by regulations provide for this Part to have effect in relation to cases which involve adoption, but not the placement of a child for adoption under the law of any part of the United Kingdom, with such modifications as the regulations may prescribe.”

*Administration and enforcement: pay*

#### **<sup>F1</sup> 5 General functions of the Board**

.....

#### **Textual Amendments**

- F1** S. 5 repealed (18.4.2005) by *Commissioners for Revenue and Customs Act 2005 (c. 11)*, s. 53(1), Sch. 4 para. 93, 5; S.I. 2005/1126, art. 2(2)(h)(i)

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## 6 Financial arrangements

- (1) In section 163(1) of the Social Security Administration Act 1992 (c. 5) (sums payable out of National Insurance Fund), for paragraph (d) there is substituted—
  - “(d) any sum which, under regulations relating to statutory sick pay, statutory maternity pay, statutory adoption pay or statutory paternity pay, falls to be paid by or on behalf of the Inland Revenue or to be set off against sums payable to the Inland Revenue otherwise than on account of contributions;”.
- (2) In section 165 of that Act (adjustments between National Insurance Fund and Consolidated Fund)—
  - <sup>F2</sup>(a) .....
  - (b) in subsection (5)(a) (adjustments in respect of certain administrative expenses of the Board), after “above” there is inserted “, or in carrying into effect any other legislation relating to statutory paternity pay or statutory adoption pay, ”.
- (3) In section 1(5) of the Social Security Contributions and Benefits Act 1992 (c. 4) (which provides for payment by way of additional contributions out of money provided by Parliament of an annual amount equal to statutory sick pay and maternity pay recovered by employers and others), for “and statutory maternity pay” there is substituted “, statutory maternity pay, statutory paternity pay and statutory adoption pay”.

### Textual Amendments

- F2** S. 6(2)(a) repealed (6.4.2010) by [Work and Families Act 2006 \(c. 18\)](#), s. 19(2), [Sch. 2](#); S.I. 2010/495, art. 4(e)(i)

## 7 Funding of employers' liabilities

- (1) The Secretary of State shall by regulations make provision for the payment by employers of [<sup>F3</sup>ordinary statutory paternity pay, additional statutory paternity pay] and statutory adoption pay to be funded by the Board to such extent as the regulations may specify.
- (2) Regulations under subsection (1) shall—
  - (a) make provision for a person who has made a payment of [<sup>F4</sup>ordinary statutory paternity pay, additional statutory paternity pay] or statutory adoption pay to be entitled, except in such circumstances as the regulations may provide, to recover an amount equal to the sum of—
    - (i) the aggregate of such of those payments as qualify for small employers' relief; and
    - (ii) an amount equal to 92 per cent of the aggregate of such of those payments as do not so qualify; and
  - (b) include provision for a person who has made a payment of [<sup>F4</sup>ordinary statutory paternity pay, additional statutory paternity pay] or statutory adoption pay qualifying for small employers' relief to be entitled, except in such circumstances as the regulations may provide, to recover an additional amount equal to the amount to which the person would have been entitled under section 167(2)(b) of the Social Security Contributions and Benefits Act

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1992 (corresponding provision for statutory maternity pay) had the payment been a payment of statutory maternity pay.

- (3) For the purposes of subsection (2), [<sup>F5</sup>a payment of ordinary statutory paternity pay, additional statutory paternity pay] or statutory adoption pay qualifies for small employers' relief if it would have so qualified were it a payment of statutory maternity pay, treating the period for which the payment is made, [<sup>F6</sup>in the case of ordinary statutory paternity pay or additional statutory paternity pay], or the payee's adoption pay period, in the case of statutory adoption pay, as the maternity pay period.
- (4) Regulations under subsection (1) may, in particular—
- (a) make provision for funding in advance as well as in arrear;
  - (b) make provision for funding, or the recovery of amounts due under provision made by virtue of subsection (2)(b), by means of deductions from such amounts for which employers are accountable to the Board as the regulations may provide, or otherwise;
  - (c) make provision for the recovery by the Board of any sums overpaid to employers under the regulations.
- (5) Where in accordance with any provision of regulations under subsection (1) an amount has been deducted from an employer's contributions payments, the amount so deducted shall (except in such cases as the Secretary of State may by regulations provide) be treated for the purposes of any provision made by or under any enactment in relation to primary or secondary Class 1 contributions—
- (a) as having been paid (on such date as may be determined in accordance with the regulations), and
  - (b) as having been received by the Board,
- towards discharging the employer's liability in respect of such contributions.
- (6) Regulations under this section must be made with the concurrence of the Board.
- (7) In this section, "contributions payments", in relation to an employer, means any payments which the employer is required, by or under any enactment, to make in discharge of any liability in respect of primary or secondary Class 1 contributions.

#### Textual Amendments

- F3** Words in s. 7(1) substituted (3.3.2010) by [Work and Families Act 2006 \(c. 18\)](#), s. 19(2), [Sch. 1 para. 50\(2\)](#); S.I. 2010/495, art. 3(c)
- F4** Words in s. 7(2) substituted (3.3.2010) by [Work and Families Act 2006 \(c. 18\)](#), s. 19(2), [Sch. 1 para. 50\(3\)](#); S.I. 2010/495, art. 3(c)
- F5** Words in s. 7(3) substituted (3.3.2010) by [Work and Families Act 2006 \(c. 18\)](#), s. 19(2), [Sch. 1 para. 50\(4\)\(a\)](#); S.I. 2010/495, art. 3(c)
- F6** Words in s. 7(3) substituted (3.3.2010) by [Work and Families Act 2006 \(c. 18\)](#), s. 19(2), [Sch. 1 para. 50\(4\)\(b\)](#); S.I. 2010/495, art. 3(c)

## 8 Regulations about payment

- (1) The Secretary of State may make regulations with respect to the payment by employers of [<sup>F7</sup>ordinary statutory paternity pay, additional statutory paternity pay] and statutory adoption pay.
- (2) Regulations under subsection (1) may, in particular, include provision—

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- (a) about the records to be kept by employers in relation to payments of statutory paternity pay and [F7ordinary statutory paternity pay, additional statutory paternity pay], including the length of time for which they are to be retained;
  - (b) for the production of wages sheets and other documents and records to officers of the Board for the purpose of enabling them to satisfy themselves that [F7ordinary statutory paternity pay, additional statutory paternity pay] and statutory adoption pay have been paid and are being paid, in accordance with the regulations, to employees who are entitled to them;
  - (c) for requiring employers to provide information to employees (in their itemised pay statements or otherwise);
  - (d) for requiring employers to make returns to the Board containing such particulars with respect to payments of [F7ordinary statutory paternity pay, additional statutory paternity pay] and statutory adoption pay as the regulations may provide.
- (3) Regulations under subsection (1) must be made with the concurrence of the Board.

#### Textual Amendments

**F7** Words in s. 8 substituted (3.3.2010) by [Work and Families Act 2006 \(c. 18\), s. 19\(2\), Sch. 1 para. 51; S.I. 2010/495, art. 3\(c\)](#)

## 9 Decisions and appeals

- (1) Part 2 of the Social Security Contributions (Transfer of Functions, Etc.) Act 1999 (c. 2) (decisions and appeals) is amended as follows.
- (2) In section 8(1) (which lists social security matters in relation to which decisions shall be for an officer of the Board)—
  - (a) in paragraph (f) (issues relating to entitlement to statutory sick pay or statutory maternity pay), for “or statutory maternity pay” there is substituted “, statutory maternity pay, statutory paternity pay or statutory adoption pay”;
  - (b) in paragraph (g) (other issues relating to those matters) for the words from “under Part” to the end there is substituted “ under Parts 11 to 12ZB of the Social Security Contributions and Benefits Act 1992 (statutory sick pay, statutory maternity pay, statutory paternity pay and statutory adoption pay)”, and
  - (c) after that paragraph there is inserted—
    - “(ga) to make any decision that falls to be made under regulations under section 7 of the Employment Act 2002 (funding of employers’ liabilities to make payments of statutory paternity or adoption pay)”.
- (3) In section 8(3)(b) (which excludes certain decisions from section 8(1)(g)) for “or statutory maternity pay” there is substituted “, statutory maternity pay, statutory paternity pay or statutory adoption pay”.
- (4) In section 11 (appeals against decisions of the Board), in subsection (2)(a) (right of employer and employee in the case of statutory sick pay and statutory maternity pay to appeal to tax appeal Commissioners), for “or statutory maternity pay” there is substituted “, statutory maternity pay, statutory paternity pay or statutory adoption pay”.

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- (5) In section 14 (matters arising as respects decisions)—
- (a) in subsection (1)(a)(i) (power to make regulations as respects such matters relating to statutory sick pay or statutory maternity pay), for “or statutory maternity pay” there is substituted “, statutory maternity pay, statutory paternity pay or statutory adoption pay”, and
  - (b) in subsection (3) (regulations relating to statutory sick pay or statutory maternity pay to be made with the concurrence of the Secretary of State), for “or statutory maternity pay” there is substituted “, statutory maternity pay, statutory paternity pay or statutory adoption pay”.

## 10 Powers to require information

- (1) The Secretary of State may by regulations make provision enabling an officer of the Board authorised by the Board for the purposes of this section to require persons of a description specified in the regulations to provide, or produce for inspection, within such period as the regulations may require, such information or documents as the officer may reasonably require for the purpose of ascertaining whether [<sup>F8</sup>ordinary statutory paternity pay, additional statutory paternity pay] or statutory adoption pay is or was payable to or in respect of any person.
- (2) The descriptions of person which may be specified by regulations under subsection (1) include, in particular—
- (a) any person claiming to be entitled to [<sup>F8</sup>ordinary statutory paternity pay, additional statutory paternity pay] or statutory adoption pay,
  - (b) any person who is, or has been, the spouse or partner of such a person as is mentioned in paragraph (a),
  - (c) any person who is, or has been, an employer of such a person as is mentioned in paragraph (a),
  - (d) any person carrying on an agency or other business for the introduction or supply to persons requiring them of persons available to do work or to perform services, and
  - (e) any person who is a servant or agent of any such person as is specified in paragraphs (a) to (d).
- (3) Regulations under subsection (1) must be made with the concurrence of the Board.

### Textual Amendments

**F8** Words in s. 10 substituted (3.3.2010) by [Work and Families Act 2006 \(c. 18\)](#), s. 19(2), [Sch. 1 para. 52](#); [S.I. 2010/495](#), art. 3(c)

## 11 Penalties: failures to comply

- (1) Where a person—
- (a) fails to produce any document or record, provide any information or make any return, in accordance with regulations under section 8, or
  - (b) fails to provide any information or document in accordance with regulations under section 10,
- he shall be liable to the penalties mentioned in subsection (2) below (subject to subsection (4)).



*Status: Point in time view as at 06/04/2010.*

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- (2) The penalties are—
- (a) a penalty not exceeding £300, and
  - (b) if the failure continues after a penalty is imposed under paragraph (a), a further penalty or penalties not exceeding £60 for each day on which the failure continues after the day on which the penalty under that paragraph was imposed (but excluding any day for which a penalty under this paragraph has already been imposed).
- (3) Where a person fails to keep records in accordance with regulations under section 81, he shall be liable to a penalty not exceeding £3,000.
- (4) Subject to subsection (5), no penalty shall be imposed under subsection (2) or (3) at any time after the failure concerned has been remedied.
- (5) Subsection (4) does not apply to the imposition of a penalty under subsection (2)(a) in respect of a failure within subsection (1)(a).
- (6) Where, in the case of any employee, an employer refuses or repeatedly fails to make payments of [F9ordinary statutory paternity pay, additional statutory paternity pay] or statutory adoption pay in accordance with any regulations under section 8, the employer shall be liable to a penalty not exceeding £3,000.
- (7) Section 118(2) of the Taxes Management Act 1970 (c. 9) (extra time for compliance etc) shall apply for the purposes of subsections (1), (3) and (6) as it applies for the purposes of that Act.
- (8) Schedule 1 to this Act (penalties: procedure and appeals) has effect in relation to penalties under this section.

#### Textual Amendments

- F9** Words in s. 11(6) substituted (6.4.2010) by [Work and Families Act 2006 \(c. 18\)](#), s. 19(2), [Sch. 1 para. 53](#); [S.I. 2010/495](#), art. 4(d)

## 12 Penalties: fraud etc.

- (1) Where a person fraudulently or negligently—
- (a) makes any incorrect statement or declaration in connection with establishing entitlement to [F10ordinary statutory paternity pay], or
  - (b) provides any incorrect information or document of a kind mentioned in regulations under section 10(1) so far as relating to [F10ordinary statutory paternity pay],
- he shall be liable to a penalty not exceeding £300.
- (2) Where a person fraudulently or negligently—
- (a) makes any incorrect statement or declaration in connection with establishing entitlement to statutory adoption pay[F11or additional statutory paternity pay], or
  - (b) provides any incorrect information or document of a kind mentioned in regulations under section 10(1) so far as relating to statutory adoption pay[F11or additional statutory paternity pay],
- he shall be liable to a penalty not exceeding £3,000.

*Status: Point in time view as at 06/04/2010.*

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- (3) Where an employer fraudulently or negligently makes incorrect payments of [<sup>F12</sup>ordinary statutory paternity pay], he shall be liable to a penalty not exceeding £300.
- (4) Where an employer fraudulently or negligently makes incorrect payments of statutory adoption pay [<sup>F13</sup>or additional statutory paternity pay], he shall be liable to a penalty not exceeding £3,000.
- (5) Where an employer fraudulently or negligently—
  - (a) produces any incorrect document or record, provides any incorrect information or makes any incorrect return, of a kind mentioned in regulations under section 8E, or
  - (b) receives incorrect payments in pursuance of regulations under section 7,
 he shall be liable to a penalty not exceeding £3,000 or, if the offence relates only to [<sup>F14</sup>ordinary statutory paternity pay], £300.
- (6) Schedule 1 (penalties: procedure and appeals) has effect in relation to penalties under this section.

#### Textual Amendments

- F10** Words in s. 12(1) substituted (6.4.2010) by [Work and Families Act 2006 \(c. 18\), s. 19\(2\), Sch. 1 para. 54\(2\)](#); S.I. 2010/495, art. 4(d)
- F11** Words in s. 12(2) inserted (6.4.2010) by [Work and Families Act 2006 \(c. 18\), s. 19\(2\), Sch. 1 para. 54\(3\)](#); S.I. 2010/495, art. 4(d)
- F12** Words in s. 12(3) substituted (6.4.2010) by [Work and Families Act 2006 \(c. 18\), s. 19\(2\), Sch. 1 para. 54\(2\)](#); S.I. 2010/495, art. 4(d)
- F13** Words in s. 12(4) inserted (6.4.2010) by [Work and Families Act 2006 \(c. 18\), s. 19\(2\), Sch. 1 para. 54\(3\)](#); S.I. 2010/495, art. 4(d)
- F14** Words in s. 12(5) substituted (6.4.2010) by [Work and Families Act 2006 \(c. 18\), s. 19\(2\), Sch. 1 para. 54\(4\)](#); S.I. 2010/495, art. 4(d)

### 13 Supply of information held by the Board

- (1) This section applies to information which is held for the purposes of functions relating to [<sup>F15</sup>ordinary statutory paternity pay, additional statutory paternity pay] or statutory adoption pay—
  - (a) by the Board, or
  - (b) by a person providing services to the Board, in connection with the provision of those services.
- (2) Information to which this section applies may be supplied—
  - (a) to the Secretary of State [<sup>F16</sup>, the Child Maintenance and Enforcement Commission] or the Department, or
  - (b) to a person providing services to the Secretary of State [<sup>F17</sup>, the Child Maintenance and Enforcement Commission] or the Department,
 for use for the purposes of functions relating to social security, child support or war pensions [<sup>F18</sup>and in relation to the Child Maintenance and Enforcement Commission, any function of that Commission].

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#### Textual Amendments

- F15** Words in s. 13(1) substituted (6.4.2010) by [Work and Families Act 2006 \(c. 18\)](#), s. 19(2), [Sch. 1 para. 55](#); [S.I. 2010/495](#), art. 4(d)
- F16** Words in s. 13(2)(a) inserted (1.11.2008) by [Child Support \(Consequential Provisions\) \(No.2\) Regulations 2008 \(S.I. 2008/2656\)](#), regs. 1, [2\(a\)](#)
- F17** Words in s. 13(2)(b) inserted (1.11.2008) by [Child Support \(Consequential Provisions\) \(No.2\) Regulations 2008 \(S.I. 2008/2656\)](#), regs. 1, [2\(a\)](#)
- F18** Words in s. 13(2) added (1.11.2008) by [Child Support \(Consequential Provisions\) \(No.2\) Regulations 2008 \(S.I. 2008/2656\)](#), regs. 1, [2\(b\)](#)

### 14 Supply of information held by the Secretary of State

- (1) This section applies to information which is held for the purposes of functions relating to [<sup>F19</sup>ordinary statutory paternity pay, additional statutory paternity pay] or statutory adoption pay—
- by the Secretary of State or the Department, or
  - by a person providing services to the Secretary of State or the Department, in connection with the provision of those services.
- (2) Information to which this section applies may be supplied—
- to the Board, or
  - to a person providing services to the Board,
- for use for the purposes of functions relating to [<sup>F19</sup>ordinary statutory paternity pay, additional statutory paternity pay] or statutory adoption pay.

#### Textual Amendments

- F19** Words in s. 14 substituted (6.4.2010) by [Work and Families Act 2006 \(c. 18\)](#), s. 19(2), [Sch. 1 para. 56](#); [S.I. 2010/495](#), art. 4(d)

### 15 Use of information by the Board

- (1) Information which is held—
- by the Board, or
  - by a person providing services to the Board, in connection with the provision of those services,
- for the purposes of any functions specified in any paragraph of subsection (2) below may be used for the purposes of, or for any purposes connected with, the exercise of any functions specified in any other paragraph of that subsection, and may be supplied to any person providing services to the Board for those purposes.
- (2) The functions referred to in subsection (1) above are—
- the functions of the Board in relation to [<sup>F20</sup>ordinary] statutory paternity pay;
  - <sup>F21</sup>(aa) their functions in relation to additional statutory paternity pay;
  - their functions in relation to statutory adoption pay; and
  - their functions in relation to tax, contributions, statutory sick pay, statutory maternity pay or tax credits, or functions under Part 3 of the Pension Schemes Act 1993 (c. 48) (certification of pension scheme, etc.) or Part 3 of the Pension

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Schemes (Northern Ireland) Act 1993 (c. 49) (corresponding provisions for Northern Ireland).

- (3) In subsection (2)(c) above, “contributions” means contributions under Part 1 of the Social Security Contributions and Benefits Act 1992 (c. 4) or Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7).

#### **Textual Amendments**

- F20** Word in s. 15(2)(a) inserted (6.4.2010) by [Work and Families Act 2006 \(c. 18\)](#), s. 19(2), [Sch. 1 para. 57\(a\)](#); [S.I. 2010/495](#), art. 4(d)
- F21** S. 15(2)(aa) inserted (6.4.2010) by [Work and Families Act 2006 \(c. 18\)](#), s. 19(2), [Sch. 1 para. 57\(b\)](#); [S.I. 2010/495](#), art. 4(d)

## **16 Interpretation**

In sections 5 to 15—

“the Board” means the Commissioners of Inland Revenue;

“the Department” means the Department for Social Development or the Department for Employment and Learning;

“employer” and “employee” have the same meanings as in Parts 12ZA and 12ZB of the Social Security Contributions and Benefits Act 1992.

## **CHAPTER 2**

### MATERNITY

## **17 Rights during and after maternity leave**

- (1) Chapter 1 of Part 8 of the Employment Rights Act 1996 (c. 18) (maternity leave) is amended as follows.
- (2) In section 71 (ordinary maternity leave), in subsection (4) (rights during and after leave)—
- (a) in paragraph (a), after “entitled” there is inserted “, for such purposes and to such extent as may be prescribed,”,
  - (b) in paragraph (b), after “bound” there is inserted “, for such purposes and to such extent as may be prescribed”, and
  - (c) for paragraph (c) there is substituted—
 

“(c) is entitled to return from leave to a job of a prescribed kind.”
- (3) In that section, for subsection (7) there is substituted—
- “(7) The Secretary of State may make regulations making provision, in relation to the right to return under subsection (4)(c) above, about—
- (a) seniority, pension rights and similar rights;
  - (b) terms and conditions of employment on return.”
- (4) In section 73 (additional maternity leave), after subsection (5) there is inserted—

*Status: Point in time view as at 06/04/2010.*

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“(5A) In subsection (4)(c), the reference to return from leave includes, where appropriate, a reference to a continuous period of absence attributable partly to additional maternity leave and partly to ordinary maternity leave.”

(5) In section 74 (redundancy and dismissal), in subsection (4) (power to make provision about the right to return from, and for dismissal at the end of, an additional maternity leave period)—

- (a) after “section” (where it first appears) there is inserted “ 71 or ”,
- (b) in paragraph (a), after “section” there is inserted “ 71(4)(c) or ”, and
- (c) in paragraph (b), after “an” there is inserted “ ordinary or ”.

## F22 18 Maternity pay period

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### Textual Amendments

F22 S. 18 repealed (1.10.2006) by [Work and Families Act 2006 \(c. 18\)](#), s. 19(2), [Sch. 2](#); S.I. 2006/1682, art. 3(i)(ii)

## 19 Rate of statutory maternity pay

For section 166 of the Social Security Contributions and Benefits Act 1992 there is substituted—

### “166 Rate of statutory maternity pay

- (1) Statutory maternity pay shall be payable to a woman—
  - (a) at the earnings-related rate, in respect of the first 6 weeks in respect of which it is payable; and
  - (b) at whichever is the lower of the earnings-related rate and such weekly rate as may be prescribed, in respect of the remaining portion of the maternity pay period.
- (2) The earnings-related rate is a weekly rate equivalent to 90 per cent of a woman’s normal weekly earnings for the period of 8 weeks immediately preceding the 14th week before the expected week of confinement.
- (3) The weekly rate prescribed under subsection (1)(b) above must not be less than the weekly rate of statutory sick pay for the time being specified in section 157(1) above or, if two or more such rates are for the time being so specified, the higher or highest of those rates.”

### Commencement Information

II S. 19 in force at 6.4.2003 by [S.I. 2002/2866](#), art. 2(3), [Sch. 1 Pt. 3](#) (with [Sch. 3](#))

*Status: Point in time view as at 06/04/2010.*

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## 20 Entitlement to statutory maternity pay

In section 164 of the Social Security Contributions and Benefits Act 1992 (statutory maternity pay — entitlement and liability to pay)—

- (a) in subsection (2)(a), the words “, wholly or partly because of pregnancy or confinement” are omitted;
- (b) for subsection (4) there is substituted—

“(4) A woman shall be entitled to payments of statutory maternity pay only if—

- (a) she gives the person who will be liable to pay it notice of the date from which she expects his liability to pay her statutory maternity pay to begin; and
- (b) the notice is given at least 28 days before that date or, if that is not reasonably practicable, as soon as is reasonably practicable.”;
- (c) in paragraph (e) of subsection (9), for sub-paragraphs (i) to (iii) there is substituted “in such cases as may be prescribed”; and
- (d) after that paragraph there is inserted—
  - “(ea) provide that subsection (4) above shall not have effect, or shall have effect subject to prescribed modifications, in such cases as may be prescribed.”.

## 21 Funding of employers’ liabilities: statutory maternity pay

- (1) For section 167 of the Social Security Contributions and Benefits Act 1992 (c. 4) there is substituted—

### **“167 Funding of employers’ liabilities in respect of statutory maternity pay**

- (1) Regulations shall make provision for the payment by employers of statutory maternity pay to be funded by the Commissioners of Inland Revenue to such extent as may be prescribed.
- (2) Regulations under subsection (1) shall—
  - (a) make provision for a person who has made a payment of statutory maternity pay to be entitled, except in prescribed circumstances, to recover an amount equal to the sum of—
    - (i) the aggregate of such of those payments as qualify for small employers’ relief; and
    - (ii) an amount equal to 92 per cent of the aggregate of such of those payments as do not so qualify; and
  - (b) include provision for a person who has made a payment of statutory maternity pay qualifying for small employers’ relief to be entitled, except in prescribed circumstances, to recover an additional amount, determined in such manner as may be prescribed—
    - (i) by reference to secondary Class 1 contributions paid in respect of statutory maternity pay;
    - (ii) by reference to secondary Class 1 contributions paid in respect of statutory sick pay; or

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- (iii) by reference to the aggregate of secondary Class 1 contributions paid in respect of statutory maternity pay and secondary Class 1 contributions paid in respect of statutory sick pay.
- (3) For the purposes of this section a payment of statutory maternity pay which a person is liable to make to a woman qualifies for small employers' relief if, in relation to that woman's maternity pay period, the person liable to make the payment is a small employer.
- (4) For the purposes of this section "small employer", in relation to a woman's maternity pay period, shall have the meaning assigned to it by regulations, and, without prejudice to the generality of the foregoing, any such regulations—
- (a) may define that expression by reference to the amount of a person's contributions payments for any prescribed period; and
  - (b) if they do so, may in that connection make provision for the amount of those payments for that prescribed period—
    - (i) to be determined without regard to any deductions that may be made from them under this section or under any other enactment or instrument; and
    - (ii) in prescribed circumstances, to be adjusted, estimated or otherwise attributed to him by reference to their amount in any other prescribed period.
- (5) Regulations under subsection (1) may, in particular, make provision—
- (a) for funding in advance as well as in arrear;
  - (b) for funding, or the recovery of amounts due under provision made by virtue of subsection (2)(b), by means of deductions from such amounts for which employers are accountable to the Commissioners of Inland Revenue as may be prescribed, or otherwise;
  - (c) for the recovery by the Commissioners of Inland Revenue of any sums overpaid to employers under the regulations.
- (6) Where in accordance with any provision of regulations under subsection (1) an amount has been deducted from an employer's contributions payments, the amount so deducted shall (except in such cases as may be prescribed) be treated for the purposes of any provision made by or under any enactment in relation to primary or secondary Class 1 contributions—
- (a) as having been paid (on such date as may be determined in accordance with the regulations), and
  - (b) as having been received by the Commissioners of Inland Revenue, towards discharging the employer's liability in respect of such contributions.
- (7) Regulations under this section must be made with the concurrence of the Commissioners of Inland Revenue.
- (8) In this section "contributions payments", in relation to an employer, means any payments which the employer is required, by or under any enactment, to make in discharge of any liability in respect of primary or secondary Class 1 contributions."
- (2) For section 163 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) there is substituted—

*Status: Point in time view as at 06/04/2010.*

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### **“163 Funding of employers’ liabilities in respect of statutory maternity pay**

- (1) Regulations shall make provision for the payment by employers of statutory maternity pay to be funded by the Commissioners of Inland Revenue to such extent as may be prescribed.
- (2) Regulations under subsection (1) shall—
  - (a) make provision for a person who has made a payment of statutory maternity pay to be entitled, except in prescribed circumstances, to recover an amount equal to the sum of—
    - (i) the aggregate of such of those payments as qualify for small employers’ relief; and
    - (ii) an amount equal to 92 per cent of the aggregate of such of those payments as do not so qualify; and
  - (b) include provision for a person who has made a payment of statutory maternity pay qualifying for small employers’ relief to be entitled, except in prescribed circumstances, to recover an additional amount, determined in such manner as may be prescribed—
    - (i) by reference to secondary Class 1 contributions paid in respect of statutory maternity pay;
    - (ii) by reference to secondary Class 1 contributions paid in respect of statutory sick pay; or
    - (iii) by reference to the aggregate of secondary Class 1 contributions paid in respect of statutory maternity pay and secondary Class 1 contributions paid in respect of statutory sick pay.
- (3) For the purposes of this section a payment of statutory maternity pay which a person is liable to make to a woman qualifies for small employers’ relief if, in relation to that woman’s maternity pay period, the person liable to make the payment is a small employer.
- (4) For the purposes of this section “small employer”, in relation to a woman’s maternity pay period, shall have the meaning assigned to it by regulations, and, without prejudice to the generality of the foregoing, any such regulations—
  - (a) may define that expression by reference to the amount of a person’s contributions payments for any prescribed period; and
  - (b) if they do so, may in that connection make provision for the amount of those payments for that prescribed period—
    - (i) to be determined without regard to any deductions that may be made from them under this section or under any other enactment or instrument; and
    - (ii) in prescribed circumstances, to be adjusted, estimated or otherwise attributed to him by reference to their amount in any other prescribed period.
- (5) Regulations under subsection (1) may, in particular, make provision—
  - (a) for funding in advance as well as in arrear;
  - (b) for funding, or the recovery of amounts due under provision made by virtue of subsection (2)(b), by means of deductions from such



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- amounts for which employers are accountable to the Commissioners of Inland Revenue as may be prescribed, or otherwise;
- (c) for the recovery by the Commissioners of Inland Revenue of any sums overpaid to employers under the regulations.
- (6) Where in accordance with any provision of regulations under subsection (1) an amount has been deducted from an employer's contributions payments, the amount so deducted shall (except in such cases as may be prescribed) be treated for the purposes of any provision made by or under any enactment in relation to primary or secondary Class 1 contributions—
- (a) as having been paid (on such date as may be determined in accordance with the regulations), and
- (b) as having been received by the Commissioners of Inland Revenue, towards discharging the employer's liability in respect of such contributions.
- (7) Regulations under any provision of this section shall be made by the Secretary of State.
- (8) Regulations under this section must be made with the concurrence of the Commissioners of Inland Revenue.
- (9) In this section “contributions payments”, in relation to an employer, means any payments which the employer is required, by or under any enactment, to make in discharge of any liability in respect of primary or secondary Class 1 contributions.”

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**Commencement Information**

**I2** S. 21 in force at 6.4.2003 by S.I. 2002/2866, art. 2(3), Sch. 1 Pt. 3 (with Sch. 3)

**Status:**

Point in time view as at 06/04/2010.

**Changes to legislation:**

Employment Act 2002, Part 1 is up to date with all changes known to be in force on or before 21 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.