



# Work and Families Act 2006

## 2006 CHAPTER 18

### *Additional paternity leave and pay*

#### **3 Additional paternity leave: birth**

In the Employment Rights Act 1996 (c. 18) (in this Act referred to as “ERA 1996”), in Part 8 (which makes provision for leave for family reasons), after section 80A insert—

##### **“80AA Entitlement to additional paternity leave: birth**

- (1) The Secretary of State may make regulations entitling an employee who satisfies specified conditions—
  - (a) as to duration of employment,
  - (b) as to relationship with a 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, at a time when the child’s mother satisfies any conditions prescribed under subsection (2).
- (2) The conditions that may be prescribed under this subsection are conditions relating to any one or more of the following—
  - (a) any employment or self-employment of the child’s mother;
  - (b) her entitlement (or lack of entitlement) to leave under this Part or to statutory maternity pay or maternity allowance;
  - (c) whether, and to what extent, she is exercising or has exercised any such entitlement.
- (3) Any regulations under this section 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.
- (4) Provision under subsection (3)(a) shall secure that an employee is not entitled to more than 26 weeks’ leave in respect of a child.

- (5) Provision under subsection (3)(b) shall secure that leave under this section—
- (a) may not be taken before the end of a specified period beginning with the date of the child's birth, but
  - (b) must be taken before the end of the period of twelve months beginning with that date.
- (6) Subsections (4) and (5)(a) do not limit the provision that may be made under subsection (3) in relation to cases where the child's mother has died before the end of the period mentioned in subsection (5)(b).
- (7) 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;
  - (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) specify a minimum period which may be taken as leave under this section;
  - (d) make provision about how leave under this section may be taken;
  - (e) specify circumstances in which an employee may work for his employer during a period of leave under this section without bringing the period of leave to an end.
- (8) Where more than one child is born as a result of the same pregnancy, the reference in subsection (5) 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.
- (9) In this section "week" means any period of seven days."

#### **4 Additional paternity leave: adoption**

After section 80B of ERA 1996 insert—

##### **"80BB Entitlement to additional paternity leave: adoption**

- (1) The Secretary of State may make regulations entitling an employee who satisfies specified conditions—
- (a) as to duration of employment,
  - (b) as to relationship with a child 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 so placed for adoption ("the adopter"),
- to be absent from work on leave under this section for the purpose of caring for the child, at a time when the adopter satisfies any conditions prescribed under subsection (2).
- (2) The conditions that may be prescribed under this subsection are conditions relating to any one or more of the following—
- (a) any employment or self-employment of the adopter;
  - (b) the adopter's entitlement (or lack of entitlement) to leave under this Part or to statutory adoption pay;

- (c) whether, and to what extent, the adopter is exercising or has exercised any such entitlement.
- (3) Any regulations under this section 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.
- (4) Provision under subsection (3)(a) shall secure that an employee is not entitled to more than 26 weeks’ leave in respect of a child.
- (5) Provision under subsection (3)(b) shall secure that leave under this section—
  - (a) may not be taken before the end of a specified period beginning with the date of the child’s placement for adoption, but
  - (b) must be taken before the end of the period of twelve months beginning with that date.
- (6) Subsections (4) and (5)(a) do not limit the provision that may be made under subsection (3) in relation to cases where the adopter has died before the end of the period mentioned in subsection (5)(b).
- (7) 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;
  - (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) specify a minimum period which may be taken as leave under this section;
  - (e) make provision about how leave under this section may be taken;
  - (f) specify circumstances in which an employee may work for his employer during a period of leave under this section without bringing the period of leave to an end.
- (8) Where more than one child is placed for adoption as part of the same arrangement, the reference in subsection (5) 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.
- (9) In this section “week” means any period of seven days.
- (10) 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.”

## **5 Rights during and after additional paternity leave**

- (1) Section 80C of ERA 1996 (rights during and after paternity leave) is amended as follows.

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*Status: This is the original version (as it was originally enacted).*

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- (2) In subsection (1) after “80A” insert “or 80AA”.
- (3) In subsection (2)—
  - (a) after “80A” insert “or 80AA”, and
  - (b) before paragraph (a) insert—
    - “(za) leave under the other section.”.
- (4) In subsection (3), for the words from “as it applies” to the end substitute “or 80BB as it applies to regulations under section 80A or 80AA.”
- (5) In subsection (4)—
  - (a) after “80B” insert “or 80BB”,
  - (b) before paragraph (a) insert—
    - “(za) leave under the other section.”, and
  - (c) in paragraph (d), after “80A” insert “or 80AA”.
- (6) In subsections (6) and (7), for “section 80A or 80B” substitute “any of sections 80A to 80BB”.

## **6 Entitlement to additional statutory paternity pay: birth**

After section 171ZE of SSCBA 1992 insert—

*“Additional statutory paternity pay*

### **171ZEA Entitlement to additional statutory paternity pay: birth**

- (1) The Secretary of State may by regulations provide that, where all the conditions in subsection (2) are satisfied in relation to a person (“the claimant”), the claimant shall be entitled in accordance with the following provisions of this Part to payments to be known as “additional statutory paternity pay”.
- (2) Those conditions are—
  - (a) that the claimant satisfies prescribed conditions—
    - (i) as to relationship with a child, and
    - (ii) as to relationship with the child’s mother;
  - (b) that the claimant has been in employed earner’s employment with an employer for a continuous period of at least the prescribed length ending with a prescribed week;
  - (c) that the claimant’s normal weekly earnings for a prescribed period ending with a prescribed week are not less than the lower earnings limit in force under section 5(1)(a) at the end of that week;
  - (d) if regulations so provide, that the claimant continues in employed earner’s employment (whether or not with that employer) until a prescribed time;
  - (e) that the mother of the child by reference to whom the condition in paragraph (a) is satisfied became entitled, by reference to the birth of the child—
    - (i) to a maternity allowance, or
    - (ii) to statutory maternity pay;

- (f) that the mother has, in relation to employment as an employed or self-employed earner, taken action that is treated by regulations as constituting for the purposes of this section her return to work;
  - (g) that the day on which the mother is treated as returning to work falls—
    - (i) after the end of a prescribed period beginning with the birth of the child, but
    - (ii) at a time when at least a prescribed part of her maternity allowance period or maternity pay period remains unexpired;
  - (h) that it is the claimant's intention to care for the child during a period beginning not later than a prescribed time.
- (3) The regulations may—
- (a) exclude the application of the conditions mentioned in paragraphs (f) and (g) of subsection (2) in cases where the child's mother has died, and
  - (b) provide that the condition mentioned in paragraph (e) of that subsection shall have effect with prescribed modifications in such cases.
- (4) A person's entitlement to additional statutory paternity pay under this section shall not be affected by the birth of more than one child as a result of the same pregnancy."

## 7 Entitlement to additional statutory paternity pay: adoption

After section 171ZEA of SSCBA 1992 insert—

### **"171ZEB Entitlement to additional statutory paternity pay: adoption**

- (1) The Secretary of State may by regulations provide that, where all the conditions in subsection (2) are satisfied in relation to a person ("the claimant"), the claimant shall be entitled in accordance with the following provisions of this Part to payments to be known as "additional statutory paternity pay".
- (2) Those conditions are—
- (a) that the claimant satisfies prescribed conditions—
    - (i) as to relationship with a child who has been 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 ("the adopter");
  - (b) that the claimant has been in employed earner's employment with an employer for a continuous period of at least the prescribed length ending with a prescribed week;
  - (c) that the claimant's normal weekly earnings for a prescribed period ending with a prescribed week are not less than the lower earnings limit in force under section 5(1)(a) at the end of that week;
  - (d) if regulations so provide, that the claimant continues to work in employed earner's employment (whether or not with that employer) until a prescribed time;
  - (e) that the adopter became entitled to statutory adoption pay by reference to the placement of the child for adoption;
  - (f) that the adopter has, in relation to employment as an employed or self-employed earner, taken action that is treated by regulations as

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- constituting for the purposes of this section the adopter's return to work;
- (g) that the day on which the adopter is treated as returning to work falls—
    - (i) after the end of a prescribed period beginning with the placement of the child for adoption, but
    - (ii) at a time when at least a prescribed part of the adopter's adoption pay period remains unexpired;
  - (h) that it is the claimant's intention to care for the child during a period beginning not later than a prescribed time.
- (3) The regulations may—
- (a) exclude the application of the conditions mentioned in paragraphs (f) and (g) of subsection (2) in cases where the adopter has died, and
  - (b) provide that the condition mentioned in paragraph (e) of that subsection shall have effect with prescribed modifications in such cases.
- (4) A person may not elect to receive additional statutory paternity pay if he has elected in accordance with section 171ZL to receive statutory adoption pay.
- (5) A person's entitlement to additional 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.”

## **8 Entitlement to additional statutory paternity pay: general**

After section 171ZEB of SSCBA 1992 insert—

### **“171ZEC Entitlement to additional statutory paternity pay: general**

- (1) A person shall not be entitled to payments of additional statutory paternity pay in respect of any period unless—
  - (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 additional statutory paternity pay to begin and the date on which he expects that liability to end, and
  - (b) the notice is given by such time as may be prescribed.
- (2) The notice shall be in writing if the person who is liable to pay the additional statutory paternity pay so requests.
- (3) The Secretary of State may by regulations—
  - (a) provide that the conditions mentioned in subsection (2)(b) or (c) of section 171ZEA or 171ZEB shall have effect subject to prescribed modifications in such cases as may be prescribed;
  - (b) provide that subsection (1) of this section 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 171ZEA or 171ZEB;
  - (e) provide that a person is to be treated for the purposes of section 171ZEA or 171ZEB as being employed for a continuous period of the length prescribed under that section where—

- (i) he has been employed by the same employer for a period of at least that length under two or more 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 171ZEA or 171ZEB;
- (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 171ZEA or 171ZEB 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.”

## **9 Liability to make payments of additional statutory paternity pay**

After section 171ZEC of SSCBA 1992 insert—

### **“171ZED Liability to make payments of additional statutory paternity pay**

- (1) The liability to make payments of additional statutory paternity pay under section 171ZEA or 171ZEB is a liability of any person of whom the person entitled to the payments has been an employee as mentioned in subsection (2) (b) of that section.
- (2) Regulations shall make provision as to a former employer’s liability to pay additional 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 solely, or mainly, for the purpose of avoiding liability for additional statutory paternity pay or ordinary statutory paternity pay, or both.
- (3) The Secretary of State may, with the concurrence of the Commissioners for Her Majesty’s Revenue and Customs, by regulations specify circumstances in which, notwithstanding this section, liability to make payments of additional statutory paternity pay is to be a liability of the Commissioners.”

## **10 Additional statutory paternity pay: rate and period of pay**

After section 171ZED of SSCBA 1992 insert—

### **“171ZEE Rate and period of pay: additional statutory paternity pay**

- (1) Additional 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) Subject to the following provisions of this section, additional statutory paternity pay shall be payable in respect of a period (“the additional paternity pay period”)—

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- (a) beginning with such day as may (subject to subsection (3)) be determined in accordance with regulations, and
  - (b) ending with—
    - (i) the day on which the additional statutory pay period is ended by virtue of subsection (4) or (8), or
    - (ii) such earlier day as the employee may choose in accordance with regulations.
- (3) The first day of the additional paternity pay period must not be earlier than the day on which the child's mother or the person with whom the child is placed for adoption ("the mother or adopter") is treated for the purpose of section 171ZEA or 171ZEB as returning to work; but this subsection does not apply in a case where the mother or adopter has died.
- (4) The additional paternity pay period—
- (a) shall not last longer than any prescribed number of weeks,
  - (b) shall not continue after the end of the period of 12 months beginning with the relevant date, and
  - (c) shall not continue after the end—
    - (i) in a case falling within section 171ZEA, of the mother's maternity allowance period or maternity pay period, or
    - (ii) in a case falling within section 171ZEB, of the adoption pay period of the person with whom the child is placed for adoption.
- (5) In subsection (4)(b), "the relevant date" means—
- (a) in the case of a person to whom the conditions in section 171ZEA(2) apply, the date of the child's birth (or, where more than one child is born as a result of the same pregnancy, the date of birth of the first child born as a result of the pregnancy), and
  - (b) in the case of a person to whom the conditions in section 171ZEB(2) apply, the date of the child's placement for adoption (or, where more than one child is placed for adoption as part of the same arrangement, the date of placement of the first child to be placed as part of the arrangement).
- (6) Additional statutory paternity pay shall not be payable to a person in respect of a week if it is not his purpose at the beginning of the week to care for the child by reference to whom he satisfies the condition in sub-paragraph (i) of section 171ZEA(2)(a) or 171ZEB(2)(a).
- (7) Except in such cases as may be prescribed, additional statutory paternity pay shall not be payable to a person in respect of a week during any part of which he works for any employer.
- (8) Where subsection (6) or (7) prevents additional statutory paternity pay being payable to a person in respect of any week, the person's additional paternity pay period shall be taken to have ended at the end of the previous week.
- (9) Where for any purpose of this Part of this Act or of regulations it is necessary to calculate the daily rate of additional statutory paternity pay, the amount payable by way of additional statutory paternity pay for that day shall be taken to be one seventh of the weekly rate.



- (10) In this section “week” means a period of seven days beginning with the day of the week on which the additional paternity pay period began.”