

# WORK AND FAMILIES ACT 2006

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Section 1: Maternity pay period*

8. Statutory maternity pay is paid to women who satisfy certain conditions. To qualify, a woman must have been employed by her employer for a continuous period of at least 26 weeks ending with the week (“the qualifying week”) immediately preceding the 14<sup>th</sup> week before the expected week of her confinement. In addition, her normal weekly earnings for the period of 8 weeks ending with the qualifying week must be equal to or more than the lower earnings limit for National Insurance contributions. Statutory maternity pay is paid and administered by employers who recover most of the cost of the payments by deductions from National Insurance, PAYE tax and certain other payments due to HM Revenue and Customs.
9. Maternity allowance is paid to certain women who do not qualify for statutory maternity pay, in particular to the self-employed and to certain recently employed women. To qualify a woman must have been employed or self-employed in at least 26 of the 66 weeks ending with the week before the expected week of confinement. She must also meet an earnings condition in respect of 13 weeks falling within the 66 week period. Maternity allowance is paid directly to women by the Department for Work and Pensions and is administered by the Department.
10. The maximum period that may be prescribed in regulations as the period for which statutory maternity pay is payable is 26 weeks (see section 165(1) of the Social Security Contributions and Benefits Act 1992, as amended by section 18 of the Employment Act 2002). The period currently prescribed is a maximum period of 26 weeks. Maternity allowance is payable for the same period (see section 35(2) of the 1992 Act).
11. *Section 1* extends the maximum period that may be prescribed to 52 weeks. The intention is to prescribe, in regulations, a period of 39 weeks for women expecting babies on or after 1st April 2007. The extension to 39 weeks is a step towards the Government’s goal of one year’s maternity pay.

#### *Section 2: Adoption pay period*

12. Statutory adoption pay is available to an employee with whom a child is (or is expected to be) placed for adoption and who satisfies certain conditions relating to duration of employment and earnings. Statutory adoption pay, like statutory maternity pay, is paid by employers who recover most of the cost of the payments by deductions from National Insurance, PAYE tax and other payments due to HM Revenue and Customs.
13. The maximum period which may be prescribed in regulations as the period for which statutory adoption pay is payable is currently 26 weeks (see section 171ZN(2) of the Social Security Contributions and Benefits Act 1992, inserted by section 4 of the Employment Act 2002).

14. **Section 2** extends the maximum period that may be prescribed to 52 weeks. The intention is to prescribe, in regulations, a period of 39 weeks for cases where the placement for adoption begins on or after 1st April 2007. The extension to 39 weeks is a step towards the Government's goal of one year's adoption pay.

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

15. Section 80A of the Employment Rights Act 1996, and regulations made under it, provides eligible employees with a right to take paternity leave for the purpose of caring for a child or supporting the mother. An employee is eligible for paternity leave if he has or expects to have responsibility for the baby's upbringing and is either the father of the baby or (if he is not the father) the mother's husband or partner. In addition, he must satisfy certain conditions relating to duration of employment.
16. **Section 3** makes provision for the introduction of a new statutory right to additional paternity leave for employees following the birth of a child. It inserts a new section 80AA in the Employment Rights Act 1996. *Subsection (1)* confers power on the Secretary of State to make regulations entitling employees to be absent from work on leave for the purpose of caring for the child if they satisfy conditions relating to their relationship with the child and the child's mother and the duration of their employment. The conditions will be specified in regulations.
17. The right to additional paternity leave is a right to be absent from work at a time when the child's mother satisfies any conditions prescribed under *subsection (2)* of the new section 80AA. The conditions that may be prescribed under that subsection are conditions relating to any employment or self-employment of the child's mother, her entitlement (or lack of entitlement) to maternity leave or to Statutory Maternity Pay or Maternity Allowance and the extent to which she has exercised any such entitlement.
18. *Subsections (3) to (7)* make further provision about what must or may be included in the regulations. *Subsection (4)* provides that the regulations must ensure that an employee is not entitled to more than 26 weeks' leave. *Subsection (5)* deals with when leave may be taken. It provides that the regulations must ensure that it cannot be taken before a specified period after the child's birth but must be taken before the end of the period of 12 months beginning with the birth.
19. Certain of the restrictions imposed by subsections (4) and (5) do not apply if the child's mother dies (see *subsection (6)*). This means (for example) that in such a case the regulations could allow an employee to take leave for a period longer than 26 weeks.
20. *Subsection (7)* lists other matters which may be dealt with in the regulations, for example, it provides that the regulations may specify a minimum period which may be taken as leave.
21. *Subsection (8)* makes special provision for the case where more than one child is born as a result of a pregnancy. *Subsection (9)* defines "week" for the purposes of the new section.

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

22. Paternity leave is currently available, not only in relation to the birth of a child, but also in relation to the placement of a child for adoption. Section 80B of the Employment Rights Act 1996, and regulations made under it, provides employees who satisfy certain conditions relating to duration of employment, relationship with a child placed for adoption and relationship with a person with whom the child is placed for adoption with a right to take paternity leave.
23. **Section 4** makes provision for the introduction of a new statutory right to additional paternity leave for employees following the placement of a child for adoption. The provision made by the section largely mirrors the provision made by section 3 for additional paternity leave following birth. The section inserts a new section 80BB in

the 1996 Act and *subsection (1)* of that section confers power on the Secretary of State to make regulations entitling employees to be absent from work on leave for the purpose of caring for the child if they satisfy conditions relating to their relationship with the child and the person with whom the child is placed for adoption and the duration of their employment. The conditions will be specified in regulations.

24. *Subsections (2) to (7)* make provision comparable to that discussed at paragraphs 17 to 20 in relation to additional paternity leave following the birth of a child.
25. *Subsections (8) and (9)* clarify certain other matters: the meaning of the “date of the child’s placement” where more than one child is placed for adoption and the meaning of “week”. *Subsection (10)* provides power to make regulations relating to additional paternity leave in circumstances concerning overseas adoptions.

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

26. **Section 5** amends section 80C of the Employment Rights Act 1996 (rights during and after paternity leave). This section currently provides for regulations to be made to ensure that a person on paternity leave 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 had he not been absent. Regulations must also provide that he is bound, for such purposes and to such extent as may be prescribed, by obligations arising under those terms and conditions. The amendments to section 80C will enable comparable regulations to be made in respect of the terms and conditions applying during additional paternity leave (whether following birth or adoption).

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

27. Currently, statutory paternity pay is available to an employed earner who meets certain conditions. He must be the father of the child or (if not the father) the mother’s husband or partner and be taking time off to care for the child or support the mother. He must also satisfy certain conditions relating to duration of employment and earnings.
28. **Section 6** inserts a new section 171ZEA in Part 12ZA of the Social Security Contributions and Benefits Act 1992 which deals with statutory paternity pay. The new section allows the Secretary of State to make regulations entitling employees who satisfy certain conditions to additional statutory paternity pay following the birth of a child.
29. Additional statutory paternity pay will be paid by employers who can recover most or all of it from the state. Additional statutory paternity pay will be administered by employers in the same way as statutory paternity pay.
30. *Subsection (2)* of the new section states the conditions that an employee must meet to be entitled to additional statutory paternity pay. In some cases, the conditions provide for further matters to be dealt with in regulations. For example, *subsection (2)(a)* provides that the employee must satisfy prescribed conditions as to relationship with a child and the child’s mother. The prescribed conditions will be set out in the regulations. The conditions also include conditions relating to the employee’s employment status and earnings and the entitlement of the child’s mother to statutory maternity pay or maternity allowance.
31. The conditions include a requirement that the mother must have taken action that is treated as constituting a return to work (see *subsection (2)(f)*). The regulations will deal with what is to be treated as constituting her return. In addition, the employee will normally only qualify for additional statutory paternity pay if the mother returns to work at a time when a part of her maternity allowance period or maternity pay period remains unexpired. The regulations will specify how much of her maternity allowance period or maternity pay period must remain unexpired.

32. *Subsection (3)* allows for certain of the qualifying conditions to be modified or excluded in cases where the mother of the child has died.
33. *Subsection (4)* states that entitlement to additional statutory paternity pay will be unaffected by the birth of more than one child as a result of the same pregnancy.

***Section 7: Entitlement to additional statutory paternity pay: adoption***

34. Statutory paternity pay is available, not only in relation to the birth of a child, but also in relation to the placement of a child for adoption.
35. **Section 7** makes new provision for the payment of additional statutory paternity pay where a child is placed for adoption. It does so by inserting a new section 171ZEB in Part 12ZA of the Social Security Contributions and Benefits Act 1992. The new section allows the Secretary of State to make regulations entitling employees who satisfy certain conditions to additional statutory paternity pay following the placement of a child for adoption.
36. *Subsection (2)* states the conditions that an employee must meet to be entitled to this form of additional statutory paternity pay. These are comparable to the conditions governing entitlement to additional statutory paternity pay following birth. They include matters relating to the employee's relationship with the child placed for adoption and the person with whom he is placed ("the adopter"), the employee's employment status and earnings, the entitlement of the adopter to statutory adoption pay and her return to work. As in the case of additional statutory paternity pay following birth, the conditions sometimes provide for further matters to be dealt with in regulations.
37. *Subsection (3)* allows for certain of the qualifying conditions to be modified or excluded in cases where the adopter of the child has died.
38. *Subsection (4)* provides that additional statutory paternity pay will not be payable to someone who has elected to receive statutory adoption pay.
39. *Subsection (5)* states that entitlement to additional statutory paternity pay will be unaffected by more than one child being placed for adoption as part of the same arrangement.

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

40. **Section 8** inserts a new section 171ZEC in Part 12ZA of the Social Security Contributions and Benefits Act 1992. This makes further provision about a person's entitlement to additional statutory paternity pay (whether in relation to birth or adoption).
41. *Subsections (1) and (2)* provide that the employee needs to give notice (in writing if required by the employer) of the date from which he expects liability for payment to commence and the date on which he expects it to end. The time by which the notice must be given will be dealt with in regulations.
42. *Subsection (3)* provides power for the Secretary of State to deal with various other matters by regulations, for example, evidence of entitlement and the circumstances in which employment is to be treated as continuous for the purposes of qualifying for additional statutory paternity pay.

***Section 9: Liability to make payments of additional statutory paternity pay***

43. **Section 9** inserts a new section 171ZED in the Social Security Contributions and Benefits Act 1992. The new section makes provision about liability to pay additional statutory paternity pay (whether in relation to birth or adoption) which is similar to that currently made in relation to statutory paternity pay.

44. *Subsection (1)* of the inserted section provides for employers to be liable for the payment of additional statutory paternity pay. *Subsection (2)* requires the Secretary of State to make regulations about the liability of a former employer to pay additional statutory paternity pay where the employee has been dismissed by the employer to avoid liability for additional statutory paternity pay or ordinary statutory paternity pay.
45. *Subsection (3)* of the inserted section provides power for the Secretary of State, with the concurrence of the Commissioners of Her Majesty's Revenue and Customs, to specify in regulations circumstances in which liability for paying additional statutory paternity pay is to fall on the Commissioners.

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

46. **Section 10** inserts a new section 171ZEE in the Social Security Contributions and Benefits Act 1992 to deal with the rate at which additional statutory paternity pay is payable and the period for which it is payable.
47. The rate at which additional statutory paternity pay is payable will be prescribed in regulations (see *subsection (1)* of the new section).
48. *Subsections (2) to (5)* of the new section deal with the period for which it is payable. The period will generally begin on or after the day on which the child's mother (or the adopter) is treated as returning to work. Regulations will deal with the maximum duration of the period but it cannot continue after the end of 12 months beginning with the birth of the child (or the placement of the child for adoption).
49. *Subsection (6)* provides that additional statutory paternity pay is not payable in respect of a week if it is not the employee's purpose at the beginning of the week to care for the child in question. As the purpose of additional statutory paternity pay is to enable the employee to care for the child, *subsection (8)* also provides for entitlement to it to end in those circumstances.
50. Except in prescribed cases, additional statutory paternity pay is not payable in respect of a week during any part of which the recipient works for an employer (see *subsection (7)*). *Subsection (8)* also provides for entitlement to additional statutory paternity pay to end in those circumstances.

### ***Section 11: Leave and pay related to birth or adoption***

51. This section introduces Schedule 1, which makes amendments to a range of enactments dealing with statutory leave and pay. These amendments are discussed below.

### ***Section 12: Flexible working***

52. The Employment Act 2002 introduced new rights for working parents by way of amendments to the Employment Rights Act 1996. These included the insertion of section 80F in that Act. Section 80F confers a statutory right for a qualifying employee to apply to his employer for a change in his terms and conditions of employment to facilitate childcare. The law is commonly referred to as the right to request flexible working. Regulations deal with the conditions which must be satisfied in order to qualify for the right. The regulations currently provide that the employee must have been continuously employed for no less than 26 weeks and must be the mother, father, adopter, guardian or foster parent (or the partner of, or married to, one of those people) of the child concerned.
53. **Section 12** amends this section to widen the scope of the existing law, in particular, by allowing applications to be made by persons who have caring responsibilities for adults.
54. *Subsection (2)* amends section 80F so that applications for flexible working may be made for the purpose of caring for:

*These notes refer to the Work and Families Act 2006  
(c.18) which received Royal Assent on 21 June 2006*

- a child who is under an age prescribed in regulations or who falls within a description prescribed in regulations, or
  - a person aged 18 or over who falls within a description prescribed in regulations.
55. The person making the application must also have some relationship with the person receiving the care and the details of this will be dealt with in regulations.
56. *Subsections (3) to (5)* make other amendments of section 80F in consequence of the changes discussed above.

### **Section 13: Annual leave**

57. Workers are currently entitled to four weeks paid annual leave under the [Working Time Regulations 1998 \(S.I 1998/1833\)](#). These regulations were made under section 2(2) of the European Communities Act 1972 and implement, in relation to Great Britain, the UK's obligations under the Working Time Directive ([2003/88/EC](#)).
58. **Section 13** provides the Secretary of State with a new free-standing power to make provision about entitlement to annual leave. Regulations made under the new power will have to comply with the Directive but they could make provision for leave which is more generous than that required by it.
59. The matters which may be dealt with in the regulations are specified in *subsection (2)*. For example, the regulations may deal with the amount of annual leave entitlement and make provision for the presentation of complaints to an employment tribunal.
60. The Working Time Regulations 1998 currently deal with a number of related matters (such as the right of a worker not to be subjected to any detriment by reason of exercising his right to leave). *Subsection (2)(g)* ensures that regulations made by the Secretary of State under the new power may make comparable provision.
61. The Working Time Regulations 1998 extend to special classes of persons, such as persons in Crown employment and staff of the House of Commons and House of Lords. *Subsection (4)* ensures that the new power can also be exercised in respect of such persons.
62. *Subsection (5)* excludes from the power the subject-matter of the Agricultural Wages (Scotland) Act 1949. The Agricultural Wages (Scotland) Act 1949 regulates holiday entitlement and wages of agricultural workers in Scotland. It is within the power of the Scottish Parliament to legislate about the subject-matter of that Act as it is an exception to Section H1 of Schedule 5 to the Scotland Act 1998 (which defines the reserved matters).
63. Regulations under this section are subject to the affirmative procedure (see *subsection (7)*).

### **Section 14: Increasing the maximum amount of a week's pay for certain purposes**

64. The amount payable by way of redundancy payment and the basic award for unfair dismissal are calculated with reference to the employee's weekly pay (see sections 119 and 162 of the Employment Rights Act 1996). For the purposes of the calculation a week's pay is, by virtue of section 227 of the 1996 Act, subject to a statutory maximum which is currently £280. The same statutory maximum applies in relation to certain other compensation payments (which are listed in section 227(1)). A weekly limit also applies to the calculation of certain payments which are payable on the insolvency of an employer (including arrears of pay and holiday pay) (see section 186(1)(a) and (b) of the 1996 Act). Section 34 of the Employment Relations Act 1999 provides a mandatory mechanism for altering the statutory maximum to track changes in the retail prices index.

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65. **Section 14** gives the Secretary of State an order-making power to increase the weekly limit which applies in relation to these payments. This increase need not be related to changes in the retail prices index. The order-making power may be exercised on one occasion only.
66. *Subsection (1)* sets out the sums to which the section applies.
67. *Subsection (2)* provides that the Secretary of State may make an order, on one occasion only, to increase the sums.
68. *Subsection (3)* allows the order to make transitional provision generally. It also allows the order to exclude on one occasion the operation of section 34 of the Employment Relations Act 1999 in relation to the sums. An example of the circumstances in which this power may be used would be to avoid two increases in the sums in a period of 12 months, one increase as a result of section 34 and the other as a result of the making of an order under the new power conferred by this section.
69. *Subsection (4)* ensures that, apart from this, section 34 of the 1999 Act will continue to apply in relation to the sums (so that they will in future continue to be altered in line with changes in the retail prices index).
70. *Subsection (5)* provides that an order made under subsection (2) will be subject to the affirmative procedure.

***Section 15: Repeals***

71. **Section 15** gives effect to the repeals set out in Schedule 2.

***Section 17: Corresponding provision for Northern Ireland***

72. **Section 17** provides that an Order in Council made for Northern Ireland under paragraph 1(1) of the Schedule to the Northern Ireland Act 2000, which states that it is made only for purposes corresponding to those contained in the Act, is not to be subject to the affirmative procedure of Parliamentary scrutiny, but is instead to be subject to the negative procedure. This will make it easier for changes to Northern Ireland legislation to be timed to coincide with the changes to legislation for Great Britain.

***Section 18: Financial provisions***

73. This section provides for increased expenditure attributable to the provisions of the Act to be paid out of money provided by Parliament.