

EMPLOYMENT RELATIONS ACT 1999

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Leave for family reasons

Section 7 and Part I of Schedule 4: Maternity and parental leave

New section 76: Entitlement to parental leave

174. This new section provides that the Secretary of State must make regulations entitling a parent to a minimum of three months' leave in order to care for a child, providing qualifying conditions as set out in the regulations are satisfied. The new section gives the Secretary of State powers to prescribe in regulations:
- (*subsection (1)(a)*): the qualifying period of employment: it is intended that the regulations will provide for a one year qualifying period for the right to parental leave, the maximum period allowed under the Directive;
 - (*subsection (1)(b)*): who qualifies in terms of whether they have or will have responsibility for a child;
 - (*subsection (2)(a)*): the extent of an employee's entitlement to parental leave in respect of a child. This will enable the regulations to specify the length of leave, which under subsection (3) must not be less than three months, the minimum period required by the Parental Leave Directive;
 - (*subsections (2)(b) and (4)*): when parental leave may be taken. This will enable the regulations to set the maximum age of a child in respect of whom parental leave may be taken (which could be below 8 years, the upper limit specified in the Parental Leave Directive). The regulations will also be able to make appropriate provisions for adoptive parents, who may adopt older children or need leave before formal adoption takes place; and
 - (*subsection (5)*): further details, including circumstances in which employers may postpone leave and flexibility to specify time limits and minimum and maximum periods of absence. Factors which might count towards a decision by the employer to postpone the taking of leave by an employee could include a peak business period or a peak absence period, the level of the employee's skill and responsibility, or the difficulty in finding a short term replacement or covering the absence by other means. The regulations could include limits on the number of times or length of time for which leave could be postponed; some of the key options for consideration on timing are whether parental leave should be required to be taken as a single block, or in blocks of minimum or maximum length, or at specified times (e.g. with a proportion to be taken within the child's first year).