

EMPLOYMENT ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part One: Statutory Leave and Pay

Chapter One: Paternity and adoption leave and pay

Paternity leave and Statutory Paternity Pay

Section 1: Paternity leave

11. This section makes provision for the introduction of a new statutory right to two weeks' paternity leave. Regulations will provide for this to be taken in a single block of either one week or two weeks at the choice of the father. The intention is to make paternity leave available to fathers following the birth of a child or the placement of a child for adoption.
12. The provisions set out in the section are similar in construction to the provisions in the Employment Rights Act 1996 (ERA) in relation to parental leave, and this section inserts them into the ERA.
13. Regulations will be made making paternity leave available to an employee:
 - who has a relationship (to be specified in regulations) with a newborn child, or a child newly placed for adoption, and has a relationship (to be specified in regulations) with the mother or adoptive parent. It is intended that paternity leave will be available to an employee who expects to be parenting the newborn child or the child placed for adoption;
 - who gives appropriate notification;
 - who gives his employer a self-certificate to support his entitlement to leave, if requested to do so by his employer.
14. As it is intended that adoption leave will only be available to one spouse in cases where a married couple adopts a child, paternity leave will be available to the other spouse. For practical reasons there will be slight differences in how paternity leave operates as between those adopting within the UK and those adopting overseas. Provisions for overseas adoptions will be made in regulations.
15. Paternity leave will be available to an employee who has completed a period of qualifying service. It is intended that the requirement will be continuous service with the same employer for at least 26 weeks by the fifteenth week before the child is expected to be born, or by the week in which an approved match with the child is made. (A match occurs when an approved adoption agency matches an adopter with a child.)
16. An employee will have the right to return to a job following a period of paternity leave. It is intended that regulations will provide for:

*These notes refer to the Employment Act 2002
(c.22) which received Royal Assent on 8 July 2002*

- the right to return to the same job following absence of one week's or two weeks' paternity leave in most cases, and
- protection for employees from detriment and unfair dismissal in connection with paternity leave.