



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.”

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 7(3)(e) and word inserted by [2023 c. 20 Sch. para. 36\(4\)\(c\)](#)
- s. 15(2)(bb) word omitted by [2023 c. 20 Sch. para. 43\(a\)](#)
- s. 15(2)(bc) inserted by [2023 c. 20 Sch. para. 43\(b\)](#)