

WORK AND FAMILIES ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

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.