

WORK AND FAMILIES ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SCHEDULES

Schedule 1 – Leave and pay related to birth or adoption: further amendments

74. Many of the paragraphs of Schedule 1 make amendments to other legislation to rename “paternity leave” as “ordinary paternity leave” and “statutory paternity pay” as “ordinary statutory paternity pay”. This is to avoid any potential confusion over terminology once employees become entitled to additional statutory paternity pay and additional paternity leave. Other paragraphs make amendments to ensure that, where appropriate, statutory provisions which currently apply in relation to paternity leave or statutory paternity pay will also apply in relation to additional paternity leave or additional statutory paternity pay. In general these Notes do not deal further with those amendments.
75. *Schedule 1* also contains a number of amendments intended to make changes to maternity allowance, statutory maternity Pay, statutory adoption pay and statutory paternity pay to ease administration for employers and to assist the returning employee’s reintegration into the workforce.
76. *Paragraph 1* amends paragraph 5A of Schedule 5 to the Social Security Act 1989 which makes provision about unfair paternity leave provisions in employment-related schemes for pensions and other benefits. The amendments ensure that references in paragraph 5A to a period of paid paternity leave include references to a period during which a person is being paid additional statutory paternity pay.
77. *Paragraph 5* will add additional statutory paternity pay to the list of statutory payments set out in section 4C(11) of the Social Security Contributions and Benefits Act 1992. Section 4C is inserted into that Act by the National Insurance Contributions Act 2006 to allow regulations to be made to take account of regulations made under section 4B (of the 1992 Act) altering earnings which are subject to National Insurance Contributions liability for a past period.
78. *Paragraph 6* amends section 35(3)(a) of the Social Security Contributions and Benefits Act 1992 (SSCBA 1992).
79. Currently a woman loses maternity allowance for any day on which she works as an employed or self-employed earner. There is no discretion and any work will result in the loss of maternity allowance for the appropriate day. The amendment made by paragraph 6 will allow regulations to be made to prescribe cases in which a woman is not disqualified from receiving maternity allowance when she works in the maternity allowance period as an employed or self-employed earner. This will enable a woman to undertake the occasional day of training, appraisal or work without losing her maternity allowance for the day in question. The object is to allow better contact and communication between the woman and her employer during her maternity absence and to ease the woman’s eventual return to work.
80. *Paragraph 7* amends section 165 of SSCBA 1992.

81. *Sub-paragraph (2)* substitutes a new section 165(2) to provide for the maternity pay period to begin with the 11th week before the expected week of confinement. Section 165(3) is also substituted so that, in prescribed cases, the first day of the maternity pay period is to be a prescribed day after the beginning of the 11th week before the expected date of confinement. This allows the maternity pay period to begin on any day of the week and for it to be aligned with the maternity leave period.
82. *Sub-paragraph (3)* amends section 165(4) to provide a power to prescribe cases in which a woman may work during a part of a week without being disqualified from receiving statutory maternity pay for that week. It is intended that this power will be exercised so as to allow a limited number of days' work under her contract with the employer during the maternity pay period.
83. *Sub-paragraph (4)* inserts a new section 165(8) to define a "week" as "any period of 7 days beginning with the day of the week on which the maternity pay period begins". This allows for maternity pay to be paid for a specified number of weeks beginning on any day.
84. *Paragraph 8* amends section 166 of SSCBA 1992, which relates to the rate of statutory maternity pay.
85. *Sub-paragraph (2)* inserts a new subsection (1A) to define a "week" as any period of 7 days.
86. Statutory maternity pay is paid on the basis of a weekly rate for a total of 26 weeks (to be extended to 39 weeks). Many women are paid their contractual pay in periods which are not divisible into exact numbers of weeks. In particular many are paid by the calendar month and this leads to employers having to pay statutory maternity pay in patterns of weeks which do not relate to the woman's normal pay period.
87. To help resolve this difficulty *sub-paragraph (3)* inserts a new section 166(4) to provide for the calculation of statutory maternity pay to be made at one seventh of the weekly rate.
88. *Paragraph 9* amends section 171 of SSCBA 1992 by inserting a new definition of week for the purposes of Part 12 of that Act. "Week" generally 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 case" but it has a different meaning in section 165(1), (4) and (6), section 166(1) and paragraph 3(2) of Schedule 13.
89. *Paragraph 16* amends section 171ZE of SSCBA 1992 to allow the calculation of ordinary statutory paternity pay to be made at a daily rate, for the same reasons as are set out above in relation to statutory maternity pay (see paragraphs 86 and 87).
90. *Paragraph 21* amends section 171ZN of SSCBA 1992 which deals with the rate and period of statutory adoption pay. *Sub-paragraph (2)* inserts an amendment which would enable an occasional day's work to be performed in prescribed cases without resulting in the loss of any statutory adoption pay, in the same way as the amendment set out in paragraph 7(3) of the Schedule for statutory maternity pay.
91. *Sub-paragraph (3)* inserts a new subsection which allows the calculation of statutory adoption pay to be made at a daily rate that is to be taken as one seventh of the weekly rate. This is for the same reasons as set out above at paragraphs 86 and 87 in relation to statutory maternity pay.
92. *Paragraph 22* amends section 176 of SSCBA 1992 to provide for regulations made under the new inserted sections 171ZEA to 171ZEE (dealing with additional statutory paternity pay) to be subject to the affirmative procedure.
93. *Paragraph 23* inserts a new sub-paragraph (2A) in paragraph 3 of Schedule 13 to SSCBA 1992 to define a "week" as a "period of seven days beginning with the day of the week on which the maternity pay period begins".

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

94. *Paragraph 26* amends section 150 of the Social Security Administration Act 1992 which deals with the uprating of benefits so that it applies in relation to additional statutory paternity pay.
95. *Paragraph 31* amends section 71 of the Employment Rights Act 1996 (ERA 1996) to provide powers to make regulations which will enable a woman to undertake a few days' training or work for her employer without ending her ordinary maternity leave. The reference to 26 weeks' ordinary maternity leave reflects the current prescribed period of ordinary maternity leave.
96. *Paragraph 32* amends section 73 of ERA 1996 in a similar way to the amendment set out above to provide powers to allow a woman to undertake a few days' training or work for her employer without ending her additional maternity leave.
97. *Paragraph 33* amends section 75A of ERA 1996 in a similar way to provide powers to allow an adopter to undertake a few days' training or work for her employer without ending her ordinary adoption leave.
98. *Paragraph 34* amends section 75B of ERA 1996 to achieve the same effect in respect of additional adoption leave.
99. *Paragraph 38* makes amendments to section 80E of ERA 1996 to take account of new sections 80AA and 80BB inserted by the Act. The amendment made by *sub-paragraph (3)* provides for the Secretary of State to make regulations requiring an employee taking additional paternity leave, the mother or adopter of the child and the employers of any such persons to record or provide information in connection with paternity leave or additional paternity leave.
100. *Paragraph 42* amends section 106 of ERA 1996 to provide that where an employee taken on to cover an absence due to additional paternity leave is dismissed on the return of the original employee, the dismissal should be regarded as having been for some substantial reason of a kind to justify the dismissal. This reflects the provisions which currently apply to employees taken on to cover absences due to maternity or adoption leave.
101. *Paragraph 44* provides for regulations made under new sections 80AA and 80BB of ERA 1996 (dealing with additional paternity leave) to be made under the affirmative procedure.
102. *Paragraph 49* provides for provisions in the Finance Act 1999 about electronic communications to apply to additional statutory paternity pay.
103. *Paragraph 61* adds additional statutory paternity pay to the list of former Inland Revenue matters in Schedule 1 to the Commissioners for Revenue and Customs Act 2005. This ensures that, for the purposes of various statutory provisions which refer to that Schedule, additional statutory paternity pay is treated as if (like the other forms of statutory pay) it were a former Inland Revenue matter.