

# CHILDREN AND FAMILIES ACT 2014

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 7 - Statutory Rights to Leave and Pay**

##### **Other statutory rights**

##### *Section 122: Statutory rights to leave and pay of applicants for parental orders*

618. This section makes provision for intended parents in surrogacy arrangements, who are or will be entitled and intend to make an application for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008, to be entitled to paternity leave and pay and to adoption leave and pay in respect of the child who is or will be the subject of the order.
619. *Subsection (1)* amends section 75A of the ERA to enable the Secretary of State by regulation to apply the provisions for ordinary adoption leave to cases involving an employee who has applied or intends to apply, with another person, for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of the child who is, or will be, the subject of the parental order.
620. *Subsection (2)* amends section 75B of the ERA to enable the Secretary of State by regulation to apply the provisions for additional adoption leave to the employee and child as described above for ordinary adoption leave.
621. *Subsection (3)* amends section 75D of the ERA to enable the Secretary of State, when making regulations concerning ordinary or additional adoption leave which concern cases involving an application for a parental order, to require the employee to make a statutory declaration as to his or her eligibility, with another person, to apply for a parental order and to state their intention to make such an application.
622. *Subsection (4)* amends section 80B of the ERA to enable the Secretary of State to make regulations to provide that ordinary paternity leave following birth may apply to intended parents in surrogacy cases where an employee, with another person, is eligible and intends to apply for a parental order in respect of the child who is the subject of such an order.
623. *Subsection (5)* amends section 171ZK of the SSCBA concerning ordinary paternity pay so that regulations may apply ordinary paternity pay to qualifying intended parents in surrogacy arrangements.
624. *Subsection (6)* amends Part 12ZB of the SSCBA concerning statutory adoption pay by creating two new subsections. New subsection (2) enables regulations to be made to apply statutory adoption pay to qualifying intended parents in surrogacy arrangements. New subsection (3) enables the regulations in those cases to impose requirements on intended parents in surrogacy arrangements to provide statutory declarations as to their eligibility and intention to apply for a parental order.