

CHILDREN AND FAMILIES ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7 - Statutory Rights to Leave and Pay

Other statutory rights

Section 121: Statutory rights to leave and pay of prospective adopters with whom looked after children are placed

612. This section supports the changes being made by Part 1, which will provide swifter placement of looked after children in ‘Fostering for Adoption’ and ‘concurrent planning’ placements. It amends sections 75A and 80B of the ERA and sections 171ZB, 171ZE, 171ZJ 171ZL, 171ZN and 171ZS of the SSCBA, so that rights to adoption leave and pay and paternity leave and pay can apply to approved adopters who have looked after children placed with them as part of the ‘Fostering for Adoption’ or ‘concurrent planning’ processes under section 22C of the Children Act 1989.
613. *Subsection (1)* inserts a new provision into section 75A of the ERA which sets out conditions that may be prescribed for entitlement to ordinary adoption leave in cases relating to placement under section 22C of the Children Act 1989. These conditions are that the person must be a local authority foster parent, must be approved as a prospective adopter and must have been notified by a local authority in England that a child is to be, or is expected to be, placed with the employee under section 22C.
614. *Subsection (2)* inserts new provisions into section 80B of the ERA relating to entitlement to paternity leave. These new provisions enable regulations that are made under section 80(1) of the ERA to be revised so that paternity leave is available for the employed partners of adopters who have or expect to have a child placed with them under section 22C of the Children Act 1989. They also enable those regulations to make provision ensuring that the employee has no entitlement to take a subsequent period of paternity leave in respect of a child if they have already exercised their right to take paternity leave.
615. *Subsection (3)* inserts new subsections (8) and (9) into section 171ZB of the SSCBA, relating to entitlement to statutory paternity pay. New subsection (8) provides that the reference in subsection (2) to a child being placed for adoption is to be treated, where relevant, as including placement under section 22C of the Children Act 1989. This allows regulations setting out conditions of entitlement to paternity pay to include cases where children are placed with prospective adopters under section 22C of the Children Act 1989. Subsection (3) also makes related necessary changes to other references in subsections (3), (6) and (7) of section 171ZE of the SSCBA. New subsection (9) has the effect that a person has no further entitlement to statutory paternity pay in respect of the placement of a child for adoption if he or she has already become entitled to statutory paternity pay in respect of that child in connection with the placement of the child under section 22C.

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616. *Subsection (4)* inserts a new subsection (12) into section 171ZE of the SSCBA relating to the rate and period of statutory paternity pay, so that references in section 171(3) (b) and (10) to being placed for adoption should be read, in relevant cases, as being references to being placed under section 22C of the Children Act 1989.
617. *Subsection (5)* inserts new subsections (9) and (10) into section 171ZL of the SSCBA (entitlement to statutory adoption pay). These have the effect that various references to placement for adoption in section 171ZL shall be treated in relevant cases as referring to the placement of a child under section 22C of the Children Act 1989. They also have the effect that a person who has become entitled to statutory adoption pay in respect of a child who is (or is expected to be) placed under section 22C will not be entitled to a further period of statutory adoption pay if he or she is subsequently notified that child will (or is expected to) be placed with him or her for adoption.

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.

Section 123: Statutory paternity pay: notice requirement and period of payment

625. This section amends the existing provisions in the SSCBA on statutory paternity pay.
626. *Subsection (2)* amends section 171ZC so that the requirement to give notice reflects the changes to the period of payment of statutory paternity pay made by *subsection (3)*. The

amendments of section 171ZC also provide a power for the Secretary of State to set the amount of notice which the person must give. *Subsection (3)* amends section 171ZE to give the Secretary of State power to set the number of weeks of statutory paternity pay in regulations subject to a minimum of 2 weeks. It also allows regulations to be made to enable paternity pay to be taken in non-consecutive periods of not less than one week.

627. *Subsection (4)* requires that regulations which set the number of weeks of statutory paternity pay will be subject to the affirmative parliamentary procedure.

Section 124: Rate of statutory adoption pay

628. *Subsection (1)* repeals subsection (1) of section 171ZN of the SSCBA, and provides for the rate of statutory adoption pay to be paid at an earnings related rate for the first 6 weeks and the lower of an earnings related rate or a prescribed weekly rate, whichever is the lower, for the remaining weeks of statutory adoption pay.

629. It also sets the earnings related rate to be the equivalent of 90 per cent of a person's normal weekly earnings for the 8 weeks ending the week in which the person was notified of the adoption match. The prescribed weekly rate must not be lower than the highest weekly rate that has been set for statutory sick pay.

630. *Subsection (2)* repeals the entry in section 176(1)(a) of the SSCBA which relates to section 171ZN(1) of that Act (as section 171ZN(1) is repealed by *subsection (1)*).

Section 125: Abolition of additional paternity leave and additional statutory paternity pay

631. This section removes the statutory rights to additional paternity leave and additional statutory paternity pay.

632. *Subsection (1)* repeals the additional paternity leave provisions, for birth parents and adopters, from the ERA.

633. *Subsection (2)* repeals the additional statutory paternity pay provisions, for both birth parents and adopters, from Part 12ZA of the SSCBA.

Section 126: Further amendments

634. This section gives effect to Schedule 7. It also shows how references to "ordinary statutory paternity pay" and "statutory paternity pay" in instruments, documents and enactments are to be read once the Act renames "ordinary statutory paternity pay" as "statutory paternity pay" (which is the name this form of statutory pay had before it was changed by the Work and Families Act 2006).

Schedule 7: Statutory rights to leave and pay: further amendments

635. *Schedule 7* makes consequential amendments to a number of Acts in light of the introduction of shared parental leave and pay.

636. Many of the paragraphs make amendments to other legislation to re-name "ordinary statutory paternity pay" and "ordinary paternity leave" as "statutory paternity pay" and "paternity leave". With the abolition of additional statutory paternity pay and leave there will only be one type of paternity leave and pay and the references to "ordinary" are no longer necessary.

637. Secondly, the amendments remove references to "additional paternity leave" and "additional paternity pay" where appropriate, in line with the abolition of additional statutory paternity pay and leave.

638. Thirdly, the amendments insert references to "statutory shared parental pay" and "shared parental leave" where appropriate.

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639. *Paragraphs 1 to 4* amend Schedule 5 to the Social Security Act 1989. *Paragraphs 2 and 3* amend the existing paragraphs of Schedule 5 about employment-related schemes that contain unfair paternity leave provisions and unfair adoption leave provisions so that they also apply in cases relating to placement of a child under section 22C of the Children Act 1989 (Fostering for Adoption cases) and in cases involving surrogacy arrangements. *Paragraph 4* adds a new paragraph to Schedule 5 about employment-related schemes that contain unfair shared parental leave provisions.
640. *Paragraph 5* amends section 182 of the Finance Act 1989 (which concerns offences relating to the disclosure of information relating to social security functions). One of the ways in which it is amended is so that social security functions include functions relating to statutory shared parental pay.
641. *Paragraph 34(3) and (5)* amend powers in the ERA to allow the Secretary of State to set out in secondary legislation the nature of the right to return to work following a period of paternity leave which was combined with a period of shared parental leave.
642. *Paragraph 48* provides for provisions in the Finance Act 1999 about electronic communication to apply to additional statutory paternity pay.