

Work and Families Bill

[AS AMENDED IN STANDING COMMITTEE A]

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

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A

B I L L

[AS AMENDED IN STANDING COMMITTEE A]

TO

Make provision about statutory rights to leave and pay in connection with the birth or adoption of children; to amend section 80F of the Employment Rights Act 1996; to make provision about workers' entitlement to annual leave; to provide for the increase in the sums specified in section 186(1) and 227(1) of that Act; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Extension of maternity pay period and adoption pay period***1 Maternity pay period**

In the Social Security Contributions and Benefits Act 1992 (c. 4) (in this Act referred to as "SSCBA 1992"), in section 165(1) (which specifies the maximum period that may be prescribed as the period for which statutory maternity pay and, by virtue of section 35(2) of that Act, maternity allowance, is payable), for "26 weeks" substitute "52 weeks".

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2 Adoption pay period

In section 171ZN(2) of SSCBA 1992 (which specifies the maximum period that may be prescribed as the period for which statutory adoption pay is payable), for "26 weeks" substitute "52 weeks".

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*Additional paternity leave and pay***3 Additional paternity leave: birth**

In the Employment Rights Act 1996 (c. 18) (in this Act referred to as "ERA 1996"), in Part 8 (which makes provision for leave for family reasons), after

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section 80A insert –

“80AA Entitlement to additional paternity leave: birth

- (1) The Secretary of State may make regulations entitling an employee who satisfies specified conditions –
 - (a) as to duration of employment, 5
 - (b) as to relationship with a 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, at a time when the child’s mother satisfies any conditions prescribed under subsection (2). 10
- (2) The conditions that may be prescribed under this subsection are conditions relating to any one or more of the following –
 - (a) any employment or self-employment of the child’s mother;
 - (b) her entitlement (or lack of entitlement) to leave under this Part or to statutory maternity pay or maternity allowance; 15
 - (c) whether, and to what extent, she is exercising or has exercised any such entitlement.
- (3) Any regulations under this section shall include provision for determining –
 - (a) the extent of an employee’s entitlement to leave under this section in respect of a child; 20
 - (b) when leave under this section may be taken.
- (4) Provision under subsection (3)(a) shall secure that an employee is not entitled to more than 26 weeks’ leave in respect of a child.
- (5) Provision under subsection (3)(b) shall secure that leave under this section – 25
 - (a) may not be taken before the end of a specified period beginning with the date of the child’s birth, but
 - (b) must be taken before the end of the period of twelve months beginning with that date. 30
- (6) Subsections (4) and (5)(a) do not limit the provision that may be made under subsection (3) in relation to cases where the child’s mother has died before the end of the period mentioned in subsection (5)(b).
- (7) 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; 35
 - (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) specify a minimum period which may be taken as leave under this section; 40
 - (d) make provision about how leave under this section may be taken;
 - (e) specify circumstances in which an employee may work for his employer during a period of leave under this section without bringing the period of leave to an end. 45

(8) Where more than one child is born as a result of the same pregnancy, the reference in subsection (5) 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.

(9) In this section "week" means any period of seven days." 5

4 Additional paternity leave: adoption

After section 80B of ERA 1996 insert –

"80BB Entitlement to additional paternity leave: adoption

- (1) The Secretary of State may make regulations entitling an employee who satisfies specified conditions – 10
- (a) as to duration of employment,
 - (b) as to relationship with a child 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 so placed for adoption ("the adopter"), 15
- to be absent from work on leave under this section for the purpose of caring for the child, at a time when the adopter satisfies any conditions prescribed under subsection (2).
- (2) The conditions that may be prescribed under this subsection are conditions relating to any one or more of the following – 20
- (a) any employment or self-employment of the adopter;
 - (b) the adopter's entitlement (or lack of entitlement) to leave under this Part or to statutory adoption pay;
 - (c) whether, and to what extent, the adopter is exercising or has exercised any such entitlement. 25
- (3) Any regulations under this section 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. 30
- (4) Provision under subsection (3)(a) shall secure that an employee is not entitled to more than 26 weeks' leave in respect of a child.
- (5) Provision under subsection (3)(b) shall secure that leave under this section –
- (a) may not be taken before the end of a specified period beginning with the date of the child's placement for adoption, but 35
 - (b) must be taken before the end of the period of twelve months beginning with that date.
- (6) Subsections (4) and (5)(a) do not limit the provision that may be made under subsection (3) in relation to cases where the adopter has died before the end of the period mentioned in subsection (5)(b). 40
- (7) 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;

- (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; 5
- (d) specify a minimum period which may be taken as leave under this section;
- (e) make provision about how leave under this section may be taken; 10
- (f) specify circumstances in which an employee may work for his employer during a period of leave under this section without bringing the period of leave to an end.
- (8) Where more than one child is placed for adoption as part of the same arrangement, the reference in subsection (5) 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. 15
- (9) In this section "week" means any period of seven days.
- (10) 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." 20
- 5 Rights during and after additional paternity leave**
- (1) Section 80C of ERA 1996 (rights during and after paternity leave) is amended as follows. 25
- (2) In subsection (1) after "80A" insert "or 80AA".
- (3) In subsection (2) –
- (a) after "80A" insert "or 80AA", and
- (b) before paragraph (a) insert – 30
- “(za) leave under the other section,”
- (4) In subsection (3), for the words from “as it applies” to the end substitute “or 80BB as it applies to regulations under section 80A or 80AA.”
- (5) In subsection (4) –
- (a) after “80B” insert “or 80BB”, 35
- (b) before paragraph (a) insert –
- “(za) leave under the other section,”, and
- (c) in paragraph (d), after “80A” insert “or 80AA”.
- (6) In subsections (6) and (7), for “section 80A or 80B” substitute “any of sections 80A to 80BB”. 40

6 Entitlement to additional statutory paternity pay: birth

After section 171ZE of SSCBA 1992 insert –

“Additional statutory paternity pay

171ZEA Entitlement to additional statutory paternity pay: birth

- | | | |
|------|---|----|
| (1) | The Secretary of State may by regulations provide that, where all the conditions in subsection (2) are satisfied in relation to a person (“the claimant”), the claimant shall be entitled in accordance with the following provisions of this Part to payments to be known as “additional statutory paternity pay”. | 5 |
| (2) | Those conditions are – | 10 |
| (a) | that the claimant satisfies prescribed conditions – | |
| (i) | as to relationship with a child, and | |
| (ii) | as to relationship with the child’s mother; | |
| (b) | that the claimant has been in employed earner’s employment with an employer for a continuous period of at least the prescribed length ending with a prescribed week; | 15 |
| (c) | that the claimant’s normal weekly earnings for a prescribed period ending with a prescribed week are not less than the lower earnings limit in force under section 5(1)(a) at the end of that week; | 20 |
| (d) | if regulations so provide, that the claimant continues in employed earner’s employment (whether or not with that employer) until a prescribed time; | |
| (e) | that the mother of the child by reference to whom the condition in paragraph (a) is satisfied became entitled, by reference to the birth of the child – | 25 |
| (i) | to a maternity allowance, or | |
| (ii) | to statutory maternity pay; | |
| (f) | that the mother has, in relation to employment as an employed or self-employed earner, taken action that is treated by regulations as constituting for the purposes of this section her return to work; | 30 |
| (g) | that the day on which the mother is treated as returning to work falls – | |
| (i) | after the end of a prescribed period beginning with the birth of the child, but | 35 |
| (ii) | at a time when at least a prescribed part of her maternity allowance period or maternity pay period remains unexpired; | |
| (h) | that it is the claimant’s intention to care for the child during a period beginning not later than a prescribed time. | 40 |
| (3) | The regulations may – | |
| (a) | exclude the application of the conditions mentioned in paragraphs (f) and (g) of subsection (2) in cases where the child’s mother has died, and | 45 |
| (b) | provide that the condition mentioned in paragraph (e) of that subsection shall have effect with prescribed modifications in such cases. | |

- (4) A person's entitlement to additional statutory paternity pay under this section shall not be affected by the birth of more than one child as a result of the same pregnancy."

7 Entitlement to additional statutory paternity pay: adoption

After section 171ZEA of SSCBA 1992 insert –

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"171ZEB Entitlement to additional statutory paternity pay: adoption

- (1) The Secretary of State may by regulations provide that, where all the conditions in subsection (2) are satisfied in relation to a person ("the claimant"), the claimant shall be entitled in accordance with the following provisions of this Part to payments to be known as "additional statutory paternity pay". 10
- (2) Those conditions are –
- (a) that the claimant satisfies prescribed conditions –
 - (i) as to relationship with a child who has been placed for adoption under the law of any part of the United Kingdom, and 15
 - (ii) as to relationship with a person with whom the child is so placed for adoption ("the adopter");
 - (b) that the claimant has been in employed earner's employment with an employer for a continuous period of at least the prescribed length ending with a prescribed week; 20
 - (c) that the claimant's normal weekly earnings for a prescribed period ending with a prescribed week are not less than the lower earnings limit in force under section 5(1)(a) at the end of that week; 25
 - (d) if regulations so provide, that the claimant continues to work in employed earner's employment (whether or not with that employer) until a prescribed time;
 - (e) that the adopter became entitled to statutory adoption pay by reference to the placement of the child for adoption; 30
 - (f) that the adopter has, in relation to employment as an employed or self-employed earner, taken action that is treated by regulations as constituting for the purposes of this section the adopter's return to work;
 - (g) that the day on which the adopter is treated as returning to work falls – 35
 - (i) after the end of a prescribed period beginning with the placement of the child for adoption, but
 - (ii) at a time when at least a prescribed part of the adopter's adoption pay period remains unexpired; 40
 - (h) that it is the claimant's intention to care for the child during a period beginning not later than a prescribed time.
- (3) The regulations may –
- (a) exclude the application of the conditions mentioned in paragraphs (f) and (g) of subsection (2) in cases where the adopter has died, and 45

- (b) provide that the condition mentioned in paragraph (e) of that subsection shall have effect with prescribed modifications in such cases.
- (4) A person may not elect to receive additional statutory paternity pay if he has elected in accordance with section 171ZL to receive statutory adoption pay. 5
- (5) A person's entitlement to additional 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."
- 8 Entitlement to additional statutory paternity pay: general 10**
- After section 171ZEB of SSCBA 1992 insert –
- “171ZEC Entitlement to additional statutory paternity pay: general**
- (1) A person shall not be entitled to payments of additional statutory paternity pay in respect of any period unless – 15
- (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 additional statutory paternity pay to begin and the date on which he expects that liability to end; and
- (b) the notice is given by such time as may be prescribed.
- (2) The notice shall be in writing if the person who is liable to pay the additional statutory paternity pay so requests. 20
- (3) The Secretary of State may by regulations –
- (a) provide that the conditions mentioned in subsection (2)(b) or (c) of section 171ZEA or 171ZEB shall have effect subject to prescribed modifications in such cases as may be prescribed; 25
- (b) provide that subsection (1) of this section 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 171ZEA or 171ZEB; 30
- (e) provide that a person is to be treated for the purposes of section 171ZEA or 171ZEB as being employed for a continuous period of the length prescribed under that section where –
- (i) he has been employed by the same employer for a period of at least that length under two or more contracts of service, and 35
- (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 171ZEA or 171ZEB; 40
- (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, 45
- shall be calculated or estimated for the purposes of section 171ZEA or 171ZEB 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.”

- 9 Liability to make payments of additional statutory paternity pay** 5
- After section 171ZEC of SSCBA 1992 insert—
- “171ZED Liability to make payments of additional statutory paternity pay**
- (1) The liability to make payments of additional statutory paternity pay under section 171ZEA or 171ZEB is a liability of any person of whom the person entitled to the payments has been an employee as mentioned in subsection (2)(b) of that section. 10
- (2) Regulations shall make provision as to a former employer’s liability to pay additional 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 solely, or mainly, for the purpose of avoiding liability for additional statutory paternity pay or ordinary statutory paternity pay, or both. 15
- (3) The Secretary of State may, with the concurrence of the Commissioners for Her Majesty’s Revenue and Customs, by regulations specify circumstances in which, notwithstanding this section, liability to make payments of additional statutory paternity pay is to be a liability of the Commissioners.” 20
- 10 Additional statutory paternity pay: rate and period of pay**
- After section 171ZED of SSCBA 1992 insert—
- “171ZEE Rate and period of pay: additional statutory paternity pay** 25
- (1) Additional 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) Subject to the following provisions of this section, additional statutory paternity pay shall be payable in respect of a period (“the additional paternity pay period”)— 30
- (a) beginning with such day as may (subject to subsection (3)) be determined in accordance with regulations, and
- (b) ending with— 35
- (i) the day on which the additional statutory pay period is ended by virtue of subsection (4) or (8), or
- (ii) such earlier day as the employee may choose in accordance with regulations.
- (3) The first day of the additional paternity pay period must not be earlier than the day on which the child’s mother or the person with whom the child is placed for adoption (“the mother or adopter”) is treated for the purpose of section 171ZEA or 171ZEB as returning to work; but this subsection does not apply in a case where the mother or adopter has died. 40

- (4) The additional paternity pay period –
- (a) shall not last longer than any prescribed number of weeks,
 - (b) shall not continue after the end of the period of 12 months beginning with the relevant date, and
 - (c) shall not continue after the end – 5
 - (i) in a case falling within section 171ZEA, of the mother’s maternity allowance period or maternity pay period, or
 - (ii) in a case falling within section 171ZEB, of the adoption pay period of the person with whom the child is placed for adoption. 10
- (5) In subsection (4)(b), “the relevant date” means –
- (a) in the case of a person to whom the conditions in section 171ZEA(2) apply, the date of the child’s birth (or, where more than one child is born as a result of the same pregnancy, the date of birth of the first child born as a result of the pregnancy), and 15
 - (b) in the case of a person to whom the conditions in section 171ZEB(2) apply, the date of the child’s placement for adoption (or, where more than one child is placed for adoption as part of the same arrangement, the date of placement of the first child to be placed as part of the arrangement). 20
- (6) Additional statutory paternity pay shall not be payable to a person in respect of a week if it is not his purpose at the beginning of the week to care for the child by reference to whom he satisfies the condition in subparagraph (i) of section 171ZEA(2)(a) or 171ZEB(2)(a).
- (7) Except in such cases as may be prescribed, additional statutory paternity pay shall not be payable to a person in respect of a week during any part of which he works for any employer. 25
- (8) Where subsection (6) or (7) prevents additional statutory paternity pay being payable to a person in respect of any week, the person’s additional paternity pay period shall be taken to have ended at the end of the previous week. 30
- (9) Where for any purpose of this Part of this Act or of regulations it is necessary to calculate the daily rate of additional statutory paternity pay, the amount payable by way of additional statutory paternity pay for that day shall be taken to be one seventh of the weekly rate. 35
- (10) In this section “week” means a period of seven days beginning with the day of the week on which the additional paternity pay period began.”

Leave and pay related to birth or adoption: further amendments

11 Leave and pay related to birth or adoption: further amendments

- (1) Schedule 1 (which contains further amendments relating to statutory leave and pay) has effect. 40
- (2) Any reference to statutory paternity pay in any instrument or document made before the commencement of paragraphs 12 and 13 of Schedule 1 is to be read, in relation to any time after that commencement, as a reference to ordinary statutory paternity pay. 45

- (3) Any reference to ordinary statutory paternity pay in any enactment (including this Act and any enactment amended by this Act) or any instrument or document is to be read, in relation to any time before the commencement of paragraphs 12 and 13 of Schedule 1, as a reference to statutory paternity pay.

Miscellaneous provisions about employment rights

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12 Flexible working

- (1) Section 80F of ERA 1996 (statutory right to request contract variation) is amended as follows.

- (2) In subsection (1), for paragraph (b) substitute –

“(b) his purpose in applying for the change is to enable him to care for someone who, at the time of application, is – 10

- (i) a child who has not reached the prescribed age or falls within a prescribed description and in respect of whom (in either case) the employee satisfies prescribed conditions as to relationship, or 15

- (ii) a person aged 18 or over who falls within a prescribed description and in respect of whom the employee satisfies prescribed conditions as to relationship.”

- (3) In subsection (2)(d), for the words from “child” to the end substitute “child or other person to be cared for, the conditions as to relationship mentioned in subsection (1)(b)(i) or (ii)”. 20

- (4) Omit subsections (3), (6) and (7).

- (5) After subsection (8) insert –

“(9) Regulations under this section may make different provision for different cases. 25

- (10) In this section –

“child” means a person aged under 18;

“prescribed” means prescribed by regulations made by the Secretary of State.”

13 Annual leave

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- (1) The Secretary of State may by regulations make provision conferring on workers the right, except in prescribed cases, to a prescribed amount of annual leave in each leave year, as defined for the purposes of the regulations.

- (2) The regulations may in particular –

- (a) make provision for determining the amount of annual leave to which workers are to be entitled; 35

- (b) make provision for determining the amount of pay in respect of any period of leave which is required by the regulations to be paid leave;

- (c) make provision enabling a worker to elect when to take leave to which he is entitled by virtue of the regulations, subject to any provision of the regulations enabling his employer to require him to take, or not to take, that leave at a particular time; 40

- (d) make provision for the payment of compensation in prescribed cases to a worker who has not taken leave to which he is entitled;
 - (e) make provision as to the relationship between the rights conferred by the regulations and a worker's rights to leave, pay or compensation under any contract or under any Act or subordinate legislation; 5
 - (f) enable a worker to present a complaint to an employment tribunal that his employer has refused to permit him to exercise any right he has under the regulations, or has failed to pay him any amount due to him under the regulations;
 - (g) make, in connection with any right conferred by the regulations (including any right to payment), any other provision which is the same as or similar to any provision made, in connection with any right relating to annual leave conferred in pursuance of any Community obligation, by any regulations under section 2(2) of the 1972 Act made at any time before the day on which the first regulations under this section are made. 10 15
- (3) Regulations under this section may make provision as to—
- (a) who is to be treated as a worker for the purposes of the regulations, and
 - (b) who is to be treated as the worker's employer.
- (4) Regulations under this section may in particular— 20
- (a) make provision applying to—
 - (i) Crown employment and persons in Crown employment;
 - (ii) service as a member of the armed forces;
 - (b) make provision conferring rights to and in connection with annual leave on persons falling within any other categories of persons on whom any Community obligation of the United Kingdom requires a right to annual leave to be conferred. 25
- (5) Regulations under this section—
- (a) are to be made by statutory instrument;
 - (b) may make different provision for different cases; 30
 - (c) may contain incidental, supplemental, consequential, transitional or saving provision, including provision amending any Act or subordinate legislation.
- (6) No statutory instrument containing regulations under this section may be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 35
- (7) In this section—
- “the 1972 Act” means the European Communities Act 1972 (c. 68);
 - “the armed forces” means any of the naval, military or air forces of the Crown; 40
 - “Crown employment” has the meaning given by section 191(3) of ERA 1996;
 - “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30).
- 14 Increase of maximum amount of a week's pay for certain purposes 45**
- (1) This section applies to the sums specified in the following provisions—

- (a) section 186(1)(a) and (b) of ERA 1996 (employee’s rights on insolvency of employer: maximum amount payable);
- (b) section 227(1) of ERA 1996 (maximum amount of a week’s pay for the purposes of certain provisions of the Act relating to awards of compensation and redundancy payments). 5
- (2) The Secretary of State may, on one occasion only, by order substitute for each of the sums mentioned in subsection (1) such higher sum as may be specified in the order.
- (3) An order under this section – 10
- (a) is to be made by statutory instrument;
- (b) may include transitional provision;
- (c) may exclude, on a single occasion specified in the order under this section, any duty to make an order under section 34 of the 1999 Act (indexation of certain amounts, &c), so far as relating to the sums mentioned in subsection (1). 15
- (4) Subject to any provision made under subsection (3)(c), this section does not affect the operation of section 34 of the 1999 Act in relation to the sums substituted by the order under this section in the provisions mentioned in subsection (1).
- (5) No statutory instrument containing an order under this section may be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 20
- (6) In this section “the 1999 Act” means the Employment Relations Act 1999 (c. 26).

Supplementary

- 15 Repeals** 25
- The enactments specified in Schedule 2 are repealed to the extent specified.
- 16 Interpretation**
- In this Act –
- “ERA 1996” means the Employment Rights Act 1996 (c. 18);
- “SSCBA 1992” means the Social Security Contributions and Benefits Act 1992 (c. 4). 30
- 17 Corresponding provision for Northern Ireland**
- An Order in Council under paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 1) (legislation for Northern Ireland during suspension of devolved government) which contains a statement that it is made only for purposes corresponding to those of this Act – 35
- (a) is not subject to paragraph 2 of that Schedule (affirmative resolution of both Houses of Parliament), but
- (b) is subject to annulment in pursuance of a resolution of either House of Parliament. 40

18 Financial provisions

- (1) There shall be paid out of money provided by Parliament—
 - (a) any expenses incurred by a Minister of the Crown or government department under this Act, and
 - (b) any increase attributable to this Act in the sums which under any other Act are payable out of money so provided. 5
- (2) There shall be paid into the Consolidated Fund any increase attributable to this Act in the sums payable into that Fund under any other Act.

19 Commencement

- (1) Sections 16 to 18, this section and section 20 come into force on the day on which this Act is passed. 10
- (2) The other provisions of this Act come into force in accordance with provision made by the Secretary of State by order made by statutory instrument.
- (3) An order under this section—
 - (a) may make different provision for different purposes; 15
 - (b) may include supplementary, incidental, saving or transitional provisions.

20 Short title and extent

- (1) This Act may be cited as the Work and Families Act 2005.
- (2) Subject to subsection (3), this Act extends to England and Wales and Scotland only. 20
- (3) The following provisions extend also to Northern Ireland—
 - (a) this section and sections 17 to 19;
 - (b) paragraphs 2, 44, 48, and 54 to 60 of Schedule 1, and section 11 so far as relating to those paragraphs; 25
 - (c) the entry in Schedule 2 relating to the Income Tax (Earnings and Pensions) Act 2003 (c. 1), and section 15 so far as relating to that entry.

SCHEDULES

SCHEDULE 1

Section 11

LEAVE AND PAY RELATED TO BIRTH OR ADOPTION: FURTHER AMENDMENTS

Social Security Act 1989 (c. 24)

- 1 (1) In Schedule 5 to the Social Security Act 1989 (employment-related schemes for pensions and other benefits: equal treatment for men and women), paragraph 5A (unfair paternity leave provisions) is amended as follows. 5
- (2) In sub-paragraph (3), for “or statutory paternity pay” substitute “, ordinary statutory paternity pay or additional statutory paternity pay”.
- (3) In sub-paragraph (4), in the definition of “period of paid paternity leave” – 10
- (a) in paragraph (a), for “or (7)” substitute “, (7) or (8)”, and
- (b) in paragraph (b), for “or statutory paternity pay” substitute “, ordinary statutory paternity pay or additional statutory paternity pay”.
- (4) After sub-paragraph (7) insert – 15
- “(8) This sub-paragraph applies if –
- (a) the member’s absence from work is due to the fact that he is caring for a child, and
- (b) in relation to that child, the member satisfies the conditions prescribed – 20
- (i) under section 171ZEA(2)(a)(i) and (ii) of that Act,
- (ii) under section 171ZEB(2)(a)(i) and (ii) of that Act, or
- (iii) under section 171ZEB(2)(a)(i) and (ii) of that Act as applied by virtue of section 171K of that Act (adoption cases not involving placement under the law of the United Kingdom).” 25

Finance Act 1989 (c. 26)

- 2 In section 182 of the Finance Act 1989 (disclosure of information), in each of the following provisions – 30
- (a) subsection (1)(c),
- (b) subsection (2A)(a),
- (c) subsection (4)(c)(iii),
- (d) subsection (5)(b), and
- (e) subsection (11A),
- for “statutory paternity pay” substitute “ordinary statutory paternity pay, additional statutory paternity pay”. 35

Social Security Contributions and Benefits Act 1992 (c. 4)

- 3 In section 1(5) of SSCBA 1992 (which provides for payment by way of additional contributions out of money provided by Parliament of an annual amount equal to statutory sick pay, statutory maternity pay, statutory paternity pay and statutory adoption pay recovered by employers and others), for “statutory paternity pay” substitute “ordinary statutory paternity pay, additional statutory paternity pay”. 5
- 4 In section 4(1) of SSCBA 1992 (payments treated as remuneration and earnings), in paragraph (a), for sub-paragraphs (iii) and (iv) substitute – 10
 “(iii) ordinary statutory paternity pay;
 (iv) additional statutory paternity pay; or
 (v) statutory adoption pay; and”.
- 5 In section 4C of SSCBA 1992 (power to make provision in consequence of provision made by or by virtue of section 4B(2)), in subsection (11), in the definition of “statutory payment”, for “statutory paternity pay” substitute “ordinary statutory paternity pay, additional statutory paternity pay”. 15
- 6 In section 35 of SSCBA 1992 (state maternity allowance), in subsection (3)(a) (power by regulations to prescribe cases in which a woman is disqualified from receiving a maternity allowance), for sub-paragraph (i) substitute – 20
 “(i) during the maternity allowance period, except in prescribed cases, she does any work in employment as an employed or self-employed earner;
 (ia) during the maternity allowance period she fails without good cause to observe any prescribed rules of behaviour; or”. 25
- 7 (1) Section 165 of SSCBA 1992 (the maternity pay period) is amended as follows.
(2) For subsections (2) and (3) substitute –
 “(2) Subject to subsections (3) and (7), the maternity pay period shall begin with the 11th week before the expected week of confinement.
 (3) Cases may be prescribed in which the first day of the period is to be a prescribed day after the beginning of the 11th week before the expected week of confinement, but not later than the day immediately following the day on which she is confined.” 30
(3) In subsection (4), at the beginning insert “Except in such cases as may be prescribed,”. 35
(4) After subsection (7) insert –
 “(8) In subsections (1), (4) and (6) “week” means a period of seven days beginning with the day of the week on which the maternity pay period begins.”
- 8 (1) Section 166 of SSCBA 1992 (rate of statutory maternity pay) is amended as follows. 40
(2) After subsection (1) insert –
 “(1A) In subsection (1) “week” means any period of seven days.”

- (3) After subsection (3) insert –
- “(4) Where for any purpose of this Part of this Act or of regulations it is necessary to calculate the daily rate of statutory maternity pay, the amount payable by way of statutory maternity pay for any day shall be taken as one seventh of the weekly rate.” 5
- 9 (1) Section 171 of SSCBA 1992 (interpretation of Part 12) is amended as follows.
- (2) In subsection (1), omit the definition of “week”.
- (3) After that subsection insert –
- “(1A) In this Part, except section 165(1), (4) and (6), section 166(1) and paragraph 3(2) of Schedule 13, “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 case.” 10
- 10 For the heading to Part 12ZA of SSCBA 1992 (statutory paternity pay), substitute “ORDINARY AND ADDITIONAL STATUTORY PATERNITY PAY”. 15
- 11 In Part 12ZA of SSCBA 1992, immediately before section 171ZA insert the heading “*Ordinary statutory paternity pay*”.
- 12 In section 171ZA of SSCBA 1992 (entitlement: birth), in subsections (1) and (4), for “statutory paternity pay” substitute “ordinary statutory paternity pay”. 20
- 13 In section 171ZB of SSCBA 1992 (entitlement: adoption), in subsections (1), (4) and (6), for “statutory paternity pay” substitute “ordinary statutory paternity pay”.
- 14 In section 171ZC of SSCBA 1992 (entitlement: general), for “statutory paternity pay” (wherever occurring) substitute “ordinary statutory paternity pay”. 25
- 15 (1) Section 171ZD of SSCBA 1992 (liability to make payments) is amended as follows.
- (2) In subsection (1), after “payments of” insert “ordinary”.
- (3) In subsection (2) – 30
- (a) for “statutory paternity pay”, where first occurring, substitute “ordinary statutory paternity pay”, and
- (b) for “liability for statutory paternity pay” substitute “liability for ordinary statutory paternity pay or additional statutory paternity pay (or both)”. 35
- 16 (1) Section 171ZE of SSCBA 1992 (rate and period of statutory paternity pay) is amended as follows.
- (2) For “statutory paternity pay”, wherever occurring, substitute “ordinary statutory paternity pay”.
- (3) After subsection (10) insert – 40
- “(10A) Where for any purpose of this Part of this Act or of regulations it is necessary to calculate the daily rate of ordinary statutory paternity

- pay, the amount payable by way of ordinary statutory paternity pay for any day shall be taken as one seventh of the weekly rate.”
- 17 Immediately before section 171ZF of SSCBA 1992, insert the heading “*Ordinary and additional statutory paternity pay: supplementary provisions*”.
- 18 In section 171ZF of SSCBA 1992 (restrictions on contracting out), in subsection (2), for “statutory paternity pay” substitute “ordinary statutory paternity pay or additional statutory paternity pay”. 5
- 19 In section 171ZG of SSCBA 1992 (relationship with contractual remuneration), at the end insert –
- “(4) In this section “statutory paternity pay” means ordinary statutory paternity pay or additional statutory paternity pay.” 10
- 20 (1) Section 171ZJ of SSCBA 1992 (Part 12ZA: supplementary) is amended as follows.
- (2) In subsection (5), for “section 171ZE” substitute “sections 171ZE and 171ZEE”. 15
- (3) In subsection (10)(f), for “statutory paternity pay” substitute “ordinary statutory paternity pay or additional statutory paternity pay”.
- 21 (1) Section 171ZN of SSCBA 1992 (rate and period of statutory adoption pay) is amended as follows.
- (2) At the beginning of subsection (3) insert “Except in such cases as may be prescribed,”. 20
- (3) After subsection (6) insert –
- “(6A) Where for any purpose of this Part of this Act or of regulations it is necessary to calculate the daily rate of statutory adoption pay, the amount payable by way of statutory adoption pay for any day shall be taken as one seventh of the weekly rate.” 25
- 22 In section 176 of SSCBA 1992 (parliamentary control), in subsection (1)(a) (regulations requiring affirmative procedure), after “section 171ZE(1)” insert –
- “sections 171ZEA to 171ZEE;”. 30
- 23 In Schedule 13 to SSCBA 1992 (relationship of statutory maternity pay with benefits and other payments etc.), in paragraph 3 (contractual remuneration), after sub-paragraph (2) insert –
- “(2A) In sub-paragraph (2) “week” means a period of seven days beginning with the day of the week on which the maternity pay period begins.” 35
- Social Security Administration Act 1992 (c. 5)*
- 24 In section 5 of the Social Security Administration Act 1992 (regulations about claims for and payments of benefit) in subsection (5) for “statutory paternity pay” substitute “, ordinary statutory paternity pay, additional statutory paternity pay”. 40
- 25 In section 122AA(1) of the Social Security Administration Act 1992 (disclosure of contributions information by Her Majesty’s Revenue and

	Customs), for “statutory paternity pay” substitute “ordinary statutory paternity pay, additional statutory paternity pay”.	
26	In section 150 of the Social Security Administration Act 1992 (annual updating of benefits), in subsection (1)(j), after “171ZE(1)” insert “, 171ZEE(1)”.	
27	In section 163(1) of the Social Security Administration Act 1992 (sums payable out of National Insurance Fund), in paragraph (d) for “or statutory paternity pay” substitute “, ordinary statutory paternity pay or additional statutory paternity pay”.	5
28	(1) Section 165 of the Social Security Administration Act 1992 (adjustments between National Insurance Fund and Consolidated Fund) is amended as follows.	10
	(2) In subsection (1)(b) (adjustments in respect of the operation of legislation relating to statutory sick pay, statutory maternity pay, statutory paternity pay and statutory adoption pay), for sub-paragraphs (iii) and (iv) substitute –	15
	“(iii) ordinary statutory paternity pay;	
	(iv) additional statutory paternity pay; and	
	(v) statutory adoption pay.”	
	(3) In subsection (5)(a) (adjustments in respect of certain administrative expenses of the Board), for “statutory paternity pay” substitute “ordinary statutory paternity pay, additional statutory paternity pay”.	20
<i>Employment Rights Act 1996 (c. 18)</i>		
29	In section 27(1) of ERA 1996 (meaning of “wages” etc.), in paragraph (ca), for “statutory paternity pay” substitute “ordinary statutory paternity pay or additional statutory paternity pay”.	25
30	In section 47C of ERA 1996 (leave for domestic and family reasons), in subsection (2), for paragraph (ca) substitute –	
	“(ca) ordinary or additional paternity leave, or”.	
31	In section 71 of ERA 1996 (ordinary maternity leave), for subsection (3) substitute –	30
	“(3) Regulations under subsection (2) –	
	(a) shall secure that, where an employee has a right to leave under this section, she is entitled to an ordinary maternity leave period of at least 26 weeks;	
	(b) may allow an employee to choose, subject to prescribed restrictions, the date on which an ordinary maternity leave period starts;	35
	(c) may specify circumstances in which an employee may work for her employer during an ordinary maternity leave period without bringing the period to an end.”	40
32	In section 73 of ERA 1996 (additional maternity leave), for subsection (3) substitute –	
	“(3) Regulations under subsection (2) –	

- (a) may allow an employee to choose, subject to prescribed restrictions, the date on which an additional maternity leave period ends;
- (b) may specify circumstances in which an employee may work for her employer during an additional maternity leave period without bringing the period to an end.” 5
- 33 In section 75A of ERA 1996 (ordinary adoption leave), after subsection (2) insert –
- “(2A) Regulations under subsection (2) may specify circumstances in which an employee may work for his employer during an ordinary adoption leave period without bringing the period to an end.” 10
- 34 In section 75B of ERA 1996 (additional adoption leave), for subsection (3) substitute –
- “(3) Regulations under subsection (2) –
- (a) may allow an employee to choose, subject to prescribed restrictions, the date on which an additional adoption leave period ends; 15
- (b) may specify circumstances in which an employee may work for his employer during an additional adoption leave period without bringing the period to an end.” 20
- 35 In the heading to section 80A of ERA 1996 (entitlement to paternity leave: birth), after “to” insert “ordinary”.
- 36 In the heading to section 80B of ERA 1996 (entitlement to paternity leave: adoption), after “to” insert “ordinary”.
- 37 In section 80D of ERA 1996 (special cases), in subsection (1) for “80A or 80B” substitute “80A, 80AA, 80B or 80BB”. 25
- 38 (1) Section 80E of ERA 1996 (Chapter 3: supplemental) is amended as follows.
- (2) For “section 80A or 80B”, wherever occurring, substitute “any of sections 80A to 80BB”.
- (3) Renumber the provision as so amended to become subsection (1) of the section and at the end insert – 30
- “(2) The employers on whom duties may be imposed by regulations under section 80AA or 80BB include not only employees exercising rights by virtue of that section and their employers but also –
- (a) in the case of section 80AA, the mother of the child in question and any employer or former employer of hers, and 35
- (b) in the case of section 80BB, the person by reference to whom the condition in subsection (1)(c) of that section is satisfied and any employer or former employer of that person.”
- 39 (1) Section 88 of ERA 1996 (employments with normal working hours) is amended as follows. 40
- (2) In subsection (1)(c), for “paternity leave” substitute “ordinary or additional paternity leave”.
- (3) In subsection (2), for “statutory paternity pay” substitute “ordinary statutory paternity pay, additional statutory paternity pay”. 45

- 40 (1) Section 89 of ERA 1996 (employments without normal working hours) is amended as follows.
- (2) In subsection (3)(b), for “paternity leave” substitute “ordinary or additional paternity leave”.
- (3) In subsection (4), for “statutory paternity pay” substitute “ordinary statutory paternity pay, additional statutory paternity pay” 5
- 41 In section 99 of ERA 1996 (leave for family reasons), in subsection (3), for paragraph (ca) substitute –
“(ca) ordinary or additional paternity leave, or”.
- 42 In section 235 of ERA 1996 (other definitions), for the definition of “paternity leave” substitute – 10
““ordinary or additional paternity leave” means leave under any of sections 80A to 80BB,”.
- 43 In section 236 of ERA 1996 (orders and regulations), in subsection (3) (affirmative procedure), for “80A, 80B, 80G” substitute “80A, 80AA, 80B, 80BB, 80G”. 15

Finance Act 1997 (c. 16)

- 44 In section 110 of the Finance Act 1997 (obtaining information from social security authorities), in subsection (5A), for “statutory paternity pay” substitute “ordinary statutory paternity pay, additional statutory paternity pay” 20

Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2)

- 45 (1) Section 8 of the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (decisions by officers of Revenue and Customs) is amended as follows. 25
- (2) In subsection (1) –
- (a) in paragraphs (f) and (g), for “statutory paternity pay” substitute “ordinary statutory paternity pay, additional statutory paternity pay”, and
- (b) in paragraph (ga), for “statutory paternity or adoption pay” substitute “ordinary statutory paternity pay, additional statutory paternity pay or statutory adoption pay”. 30
- (3) In subsection (3)(b), for “statutory paternity pay” substitute “ordinary statutory paternity pay, additional statutory paternity pay”.
- 46 In section 11(2)(a) of the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (appeals against decisions of Her Majesty’s Revenue and Customs), for “statutory paternity pay” substitute “ordinary statutory paternity pay, additional statutory paternity pay”. 35
- 47 In section 14 of the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (matters arising as respects decisions), in subsections (1)(a)(i) and (3), for “statutory paternity pay” substitute “ordinary statutory paternity pay, additional statutory paternity pay”. 40

Finance Act 1999 (c. 16)

- 48 (1) Sections 132 and 133 of the Finance Act 1999 shall have effect as if additional statutory paternity pay were a matter which is under the care and management of the Commissioners for Her Majesty’s Revenue and Customs. 5
- (2) In this paragraph “additional statutory paternity pay” includes statutory pay under Northern Ireland legislation corresponding to the provisions of Part 12ZA of SSCBA 1992 relating to additional statutory paternity pay.

Employment Act 2002 (c. 22)

- 49 (1) Section 7 of the Employment Act 2002 (funding of employers’ liabilities) is amended as follows. 10
- (2) In subsection (1), for “statutory paternity pay” substitute “ordinary statutory paternity pay, additional statutory paternity pay”.
- (3) In subsection (2), for “statutory paternity pay”, in both places, substitute “ordinary statutory paternity pay, additional statutory paternity pay”. 15
- (4) In subsection (3) –
- (a) for “a payment of statutory paternity pay” substitute “a payment of ordinary statutory paternity pay, additional statutory paternity pay”, and
- (b) for “in the case of statutory paternity pay” substitute “in the case of ordinary statutory paternity pay or additional statutory paternity pay”. 20
- 50 In section 8 of the Employment Act 2002 (regulations about payment), for “statutory paternity pay”, wherever occurring, substitute “ordinary statutory paternity pay, additional statutory paternity pay”. 25
- 51 In section 10 of the Employment Act 2002 (powers to require information), for “statutory paternity pay”, in both places, substitute “ordinary statutory paternity pay, additional statutory paternity pay”.
- 52 In section 11 of the Employment Act 2002 (penalties: failure to comply), in subsection (6), for “statutory paternity pay” substitute “ordinary statutory paternity pay, additional statutory paternity pay”. 30
- 53 (1) Section 12 of the Employment Act 2002 (penalties: fraud etc.) is amended as follows.
- (2) In subsections (1) and (3), for “statutory paternity pay” substitute “ordinary statutory paternity pay”. 35
- (3) In subsections (2) and (4), after “statutory adoption pay” insert “or additional statutory paternity pay”.
- (4) In subsection (5), for “statutory paternity pay” substitute “ordinary statutory paternity pay”.
- 54 In section 13 of the Employment Act 2002 (supply of information held by Commissioners for Her Majesty’s Revenue and Customs), in subsection (1) for “statutory paternity pay” substitute “ordinary statutory paternity pay, additional statutory paternity pay”. 40

55	In section 14 of the Employment Act 2002 (supply of information held by Secretary of State), for “statutory paternity pay”, in both places, substitute “ordinary statutory paternity pay, additional statutory paternity pay”.	5										
56	In section 15 of the Employment Act 2002 (use of information by the Commissioners), in subsection (2) – <ul style="list-style-type: none"> (a) in paragraph (a), after “to” insert “ordinary”, and (b) after that paragraph insert – <ul style="list-style-type: none"> “(aa) their functions in relation to additional statutory paternity pay;”. 	5										
57	In section 55(8) of the Employment Act 2002 (references to statutory paternity pay or statutory adoption pay to include statutory pay under corresponding Northern Ireland legislation), for “statutory paternity pay” substitute “ordinary statutory paternity pay, additional statutory paternity pay”.	10										
<i>Proceeds of Crime Act 2002 (c. 29)</i>		15										
58	(1) Section 323 of the Proceeds of Crime Act 2002 (functions) is amended as follows. <ul style="list-style-type: none"> (2) In subsection (1), for paragraph (g) substitute – <ul style="list-style-type: none"> “(g) ordinary statutory paternity pay; (ga) additional statutory paternity pay;”. (3) In subsection (4), for paragraph (d) substitute – <ul style="list-style-type: none"> “(d) “ordinary statutory paternity pay” must be construed in accordance with sections 171ZA and 171ZB of that Act; (da) “additional statutory paternity pay” must be construed in accordance with sections 171ZEA and 171ZEB of that Act;” (4) In subsection (5)(d), for ““statutory paternity pay”” substitute ““ordinary statutory paternity pay“ and “additional statutory paternity pay””. 	25										
<i>Income Tax (Earnings and Pensions) Act 2003 (c. 1)</i>												
59	(1) Section 660 of the Income Tax (Earnings and Pensions) Act 2003 (taxable benefits: UK benefits) is amended as follows. <ul style="list-style-type: none"> (2) Table A in subsection (1) is amended in accordance with sub-paragraphs (3) to (5). (3) Before the entry relating to bereavement allowance insert – <table border="0" style="margin-left: 2em;"> <tr> <td style="border-right: 1px solid black; padding-right: 0.5em;">“Additional statutory paternity pay</td> <td style="padding: 0 0.5em;">SSCBA 1992</td> <td style="padding: 0 0.5em;">Section 171ZEA or 171ZEB</td> <td style="border-left: 1px solid black; padding-left: 0.5em;"></td> <td style="vertical-align: middle;">35</td> </tr> <tr> <td style="border-right: 1px solid black;"></td> <td></td> <td></td> <td style="border-left: 1px solid black; padding-left: 0.5em;">Any provision made for Northern Ireland which corresponds to section 171ZEA or 171ZEB of SSCBA 1992.”</td> <td></td> </tr> </table> 	“Additional statutory paternity pay	SSCBA 1992	Section 171ZEA or 171ZEB		35				Any provision made for Northern Ireland which corresponds to section 171ZEA or 171ZEB of SSCBA 1992.”		30
“Additional statutory paternity pay	SSCBA 1992	Section 171ZEA or 171ZEB		35								
			Any provision made for Northern Ireland which corresponds to section 171ZEA or 171ZEB of SSCBA 1992.”									

(4) After the entry relating to jobseeker’s allowance insert –

“Ordinary statutory paternity pay	SSCBA 1992 Section 171ZA or 171ZB	
	Any provision made for Northern Ireland which corresponds to section 171ZA or 171ZB of SSCBA 1992.”	5

(5) Omit the entry relating to statutory paternity pay.

(6) In subsection (2), for the words from “statutory adoption pay” to “statutory paternity pay” substitute – 10
 “additional statutory paternity pay;
 ordinary statutory paternity pay;
 statutory adoption pay;
 statutory maternity pay;”.

Commissioners for Revenue and Customs Act 2005 (c. 11) 15

60 In Schedule 1 to the Commissioners for Revenue and Customs Act 2005 (which lists former Inland Revenue matters), for paragraph 26 substitute –
 “26 Ordinary statutory paternity pay.
 26A Additional statutory paternity pay.”

SCHEDULE 2 Section 15 20

REPEALS

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Social Security Contributions and Benefits Act 1992 (c. 4)	In section 171(1), the definition of “week”.	
Employment Rights Act 1996 (c. 18)	Section 80F(3), (6) and (7).	25
Employment Act 2002 (c. 22)	Section 6(2)(a). Section 18. In Schedule 7, paragraphs 3, 26(3), 33(3), 48(2) and 49(3).	30
Income Tax (Earnings and Pensions) Act 2003 (c. 1)	In section 660, in Table A in subsection (1), the entry relating to statutory paternity pay.	

Work and Families Bill

A

B I L L

[AS AMENDED IN STANDING COMMITTEE A]

To make provision about statutory rights to leave and pay in connection with the birth or adoption of children; to amend section 80F of the Employment Rights Act 1996; to make provision about workers' entitlement to annual leave; to provide for the increase in the sums specified in section 186(1) and 227(1) of that Act; and for connected purposes.

*Presented by Secretary Alan Johnson
Supported by
The Prime Minister, Mr Secretary Prescott,
Mr Chancellor of the Exchequer,
Mr Secretary Blunkett, Mr Secretary Darling,
Ms Secretary Hewitt, Secretary Tessa Jowell,
Mr Secretary Hain and Secretary Ruth Kelly.*

*Ordered, by The House of Commons,
to be printed, 14th December 2005.*

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