



Statutory Document No. 36/07

THE SOCIAL SECURITY ACT 2000

THE WORK AND FAMILIES ACT 2006 (APPLICATION) ORDER 2007

Approved by Tynwald 20th February 2007

Coming into operation in accordance with Article 1

In exercise of the powers conferred on the Department of Health and Social Security by section 1 of the Social Security Act 2000(a), and of all other enabling powers, the following Order is hereby made: -

Citation and commencement

1. (1) This Order may be cited as the Work and Families Act 2006 (Application) Order 2007 and shall, subject to section 2(1) of the Social Security Act 2000, come into force as provided for in paragraphs (2) and (3).

(2) This article and articles 2 and 3 shall come into force forthwith.

(3) Each of the provisions of the applied legislation shall come into force or be deemed to have done so (as the case may be) as follows -

- (a) sections 16 and 18 to 20 shall be deemed to have come into force on the day on which the Work and Families Act 2006 (of Parliament) was passed; and
- (b) the remainder shall come into force or be deemed to have done so on the same day that provision comes into force or came into force (as the case may be) in Great Britain by order under section 19 of the Work and Families Act 2006.

Interpretation

2. (1) In this Order "the applied legislation" means -

- (a) sections 1, 2, 11, 16 and 18 to 20 of, and
- (b) Schedule 1 to,

the Work and Families Act 2006 (of Parliament)(b).

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(a) 2000 c.5; (b) 2006 c.18.

(2) Unless the context otherwise requires -

- (a) any reference in any of the applied legislation to any provision in an instrument of a legislative character which is not itself a provision of any of the applied legislation shall be construed as if the provision so referred to had been in force in the Island from the date on which that instrument of a legislative character had effect in Great Britain;
- (b) reference in any legislation applied by this Order to any provision of any such legislation or of any other legislation applied to the Island by an order under section 1 of the Social Security Act 2000 or section 1 of the Pension Schemes Act 1995(a) shall be construed as a reference to that legislation as it has effect in the Island.

Application to the Island of the applied legislation

3. The applied legislation, as modified and shown in the Schedule to this Order, shall apply to the Island as part of the law of the Island.

(a) 1995 c.11.

SCHEDULE

This Schedule sets out the text of sections 1, 2, 11, 16 and 18 to 20 of, and Schedule 1 to, the Work and Families Act 2006 (an Act of Parliament) with such exceptions, adaptations and modifications made where necessary.

Note: modifications subject to which the legislation is applied to the Island are in *bold italic* type.

Work and Families Act 2006

2006 Chapter 18

Extension of maternity allowance period and adoption allowance period

Maternity allowance period

1. In the Social Security Contributions and Benefits Act 1992 (c.4) (in this Act referred to as "SSCBA 1992"), *for* section 35(2) (which specifies the maximum period for which maternity allowance is payable) *substitute* –

"(2) Subject to the following provisions of this section, a maternity allowance shall be payable in respect of each week during a prescribed period ("the maternity allowance period") of a duration not exceeding 52 weeks."

Adoption allowance period

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

Additional paternity leave and pay

Additional paternity leave: birth

3. *Omitted.*

Additional paternity leave: adoption

4. *Omitted.*

Rights during and after additional paternity leave

5. *Omitted.*

Entitlement to additional statutory paternity pay: birth

6. *Omitted.*

Entitlement to additional statutory paternity pay: adoption

7. *Omitted.*

Entitlement to additional statutory paternity pay: general

8. *Omitted.*

Liability to make payments of additional statutory paternity pay

9. *Omitted.*

Additional statutory paternity pay: rate and period of pay

10. *Omitted.*

Maternity allowance, paternity allowance and adoption allowance: further amendments

Maternity allowance, paternity allowance and adoption allowance: further amendments

11. (1) Schedule 1 (which contains further amendments relating to *maternity allowance, paternity allowance and adoption allowance*) has effect.

(2) and (3) *Omitted.*

Miscellaneous provisions about employment rights

Flexible working

12. *Omitted.*

Annual leave

13. *Omitted.*

Increase of maximum amount of a week's pay for certain purposes

14. *Omitted.*

Supplementary

Repeals

15. *Omitted.*

Interpretation

16. In this Act "SSCBA 1992" means the Social Security Contributions and Benefits Act 1992 (c.4).

Corresponding provision for Northern Ireland

17. *Omitted.*

Financial provisions

18. (1) There shall be paid out of money provided by *Tynwald-*

(a) any expenses incurred by *the 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.

(2) *Omitted.*

Commencement

19. (1) Sections 16 *and* 18, this section and section 20 *shall be deemed to have* come into force on the day on which this Act *was* passed.

(2) The other provisions of this Act *shall* come into force *or shall be deemed to have done so on the same day as they come or came into force (as the case may be) in Great Britain* in accordance with provision made by the Secretary of State by order made by statutory instrument.

(3) *Such an order -*

- (a) may make different provision for different purposes;
- (b) may include supplementary, incidental, saving or transitional provisions.

Short title

20. (1) This Act may be cited as the Work and Families Act 2006.

(2) and (3) *Omitted.*

SCHEDULES

SCHEDULE 1

Section 11

MATERNITY ALLOWANCE, PATERNITY ALLOWANCE AND ADOPTION ALLOWANCE: FURTHER AMENDMENTS

Social Security Act 1989 (c. 24)

1. *Omitted.*

Finance Act 1989 (c. 26)

2. *Omitted.*

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

3. to 5. *Omitted.*

6.

(1) Section 35 of SSCBA 1992 (state maternity allowance) *is amended as follows.*

(2) *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-*

"(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".

(3) *In subsection (6)(b) (definition of "confinement") for "28 weeks" substitute "24 weeks".*

7. to 11. *Omitted.*

12. In section 171ZA of SSCBA 1992 (entitlement to *paternity allowance*: birth), in *subsection (2) –*

(a) in paragraph (b) omit "with an employer"; and

(b) in paragraph (d) omit from "with the employer" to "is satisfied".

13. In section 171ZB of SSCBA 1992 (entitlement to *paternity allowance*: adoption), in *subsection (2) –*

(a) in paragraph (b) omit "with an employer"; and

(b) in paragraph (d) omit from "with the employer" to "is satisfied".

14. to 20. *Omitted.*

21.

(1) Section 171ZNA of SSCBA 1992 (rate and period of adoption *allowance*) is amended as follows.

(2) At the beginning of subsection (3) insert "Except in such cases as may be prescribed,".

(3) *Omitted.*

22. and 23. *Omitted.*

Social Security Administration Act 1992 (c. 5)

24. to 28. *Omitted.*

Employment Rights Act 1996 (c. 18)

29. to 44. *Omitted.*

Finance Act 1997 (c. 16)

45. *Omitted.*

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

46. to 48. *Omitted.*

Finance Act 1999 (c. 16)

49. *Omitted.*

Employment Act 2002 (c. 22)

50. to 58. *Omitted.*

Proceeds of Crime Act 2002 (c. 29)

59. *Omitted.*

Income Tax (Earnings and Pensions) Act 2003 (c. 1)

60. *Omitted.*

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

61. *Omitted.*

SCHEDULE 2

REPEALS

Omitted.



Minister for Health and Social Security

EXPLANATORY NOTE

(This note is not part of the Order)

1. Section 1 of the Social Security Act 2000 (an Act of Tynwald) enables the Department, by Order, to apply to the Isle of Man, as part of the law of the Isle of Man (incorporating such exceptions, adaptations and modifications as are appropriate) any legislation to which that Act applies.
2. *Inter alia*, the Social Security Act 2000 applies to certain provisions of the Work and Families Act 2006 (an Act of the United Kingdom Parliament) and to any statutory instrument made (or having effect as if made) under any such provision. Those provisions include extending the maximum period for which maternity allowance and adoption allowance are payable from 26 weeks to 52 weeks.
3. This Order now applies to the Island those provisions of the Work and Families Act 2006 appropriate to the Isle of Man. An explanation of each provision follows.
4. **Section 1 – Maternity allowance period**
 - 4.1 *Maternity allowance – an introduction*
 - 4.1.1 Maternity allowance is payable to women who are absent from work – either in employed earner's employment or self-employed earner's employment – and who either expect to give birth within the next 11 weeks or have recently given birth.
 - 4.1.2 To qualify for maternity allowance a woman must have worked for at least 26 of the 66 weeks before the expected week of childbirth and have had earnings (on average) in at least 13 of those 66 weeks of not less than the maternity allowance threshold (£30 per week in 2006-07).
 - 4.1.3 Maternity allowance is payable to women who work as employed earners at a rate based on the lower of –

- the maximum rate of benefit (£174.65 per week in 2006-07) if their average weekly earnings are £194.05 or more; or
- 90% of their average weekly earnings if they are (currently) less than £194.05, but at least £30 (known as the “variable rate”).

4.1.4 Women who work as self-employed earners and who pay a Class 2 contribution in respect of their self-employment for any week are treated as having earnings equal to $100/90 \times$ the standard rate of maternity allowance for self-employed women for that week (£108.85 in 2006-07). So if a woman pays at least 13 Class 2 contributions in the 66 weeks leading up to the week in which she expects to give birth, she will receive maternity allowance at the rate of £108.85 per week in 2006-07, because 90% of $(100/90 \times £108.85) = £108.85$.

4.1.5 Those women whose earnings from self-employment are expected to be so low for any week they have been formally allowed by the DHSS not to pay a Class 2 contribution for that week will be treated as having earnings equal to the maternity allowance threshold for that week (£30 in 2006-07). So if a woman is excused from paying Class 2 contributions on those grounds for at least 13 of the 66 weeks leading up to the week in which she expects to give birth she will receive maternity allowance at the rate of £27.00 per week in 2006-07, because 90% of £30.00 = £27.00.

4.2 *Extending the maternity allowance period*

4.2.1 Section 35(2) of the Social Security Contributions and Benefits Act 1992 (as that Act of the United Kingdom Parliament has effect in the Isle of Man (“the Contributions and Benefits Act”)) previously provided that maternity allowance was to be payable for a period (called the “maternity allowance period”) of not more than 26 weeks.

4.2.2 Section 1 replaces the existing section 35(2) with a new version. New section 35(2) provides that the maternity allowance period shall now be of a length as prescribed in regulations, as long as it is no more than 52 weeks. It is intended that regulations shall prescribe the maternity allowance period as being a period of 39 weeks for women expecting babies on or after the week beginning 24th June 2007, but that eventually the maternity allowance period will be 52 weeks.

5. Section 2 – Adoption allowance period

5.1 *Adoption allowance – an introduction*

5.1.1 Adoption allowance is payable to men and women normally in employed earner’s employment with whom a child is (or is expected to be) placed for adoption. They must satisfy equivalent employment and earnings conditions as women must do to qualify for maternity allowance.

5.1.2 Section 171ZN(2) of the Contributions and Benefits Act provides that the maximum period which may be prescribed in regulations as the period for which adoption allowance is payable (the “adoption allowance period”) is currently 26 weeks.

5.2 *Extending the adoption allowance period*

5.2.1 Section 2 extends the adoption allowance period that may be prescribed in Regulations from 26 to 52 weeks. As with maternity allowance, it is intended that Regulations shall prescribe the adoption allowance period as being no longer than 39 weeks for cases where the child is placed for adoption on or after 1st April 2007, but that in the future the adoption allowance period will be extended to 52 weeks.

6. **Section 11 – Maternity allowance and adoption allowance: further amendments to the Contributions and Benefits Act**
- 6.1 Section 11 introduces Schedule 1 to the Act. Only certain provisions of Schedule 1 are applied to the Isle of Man by this Order.
- 6.2 Paragraph 6 of Schedule 1 amends section 35 of the Contributions and Benefits Act (state maternity allowance).
- 6.3 Sub-paragraph (1) of paragraph 6 introduces the amendments.
- 6.4 *Cases in which a woman is to be allowed to work during the maternity allowance period without losing entitlement to benefit*
- 6.4.1 Currently a woman loses entitlement to maternity allowance for any day on which she works as an employed or self-employed earner.
- 6.4.2 Sub-paragraph (2) of paragraph 6 amends section 35(3)(a) of the Contributions and Benefits Act to allow regulations to be made prescribing cases in which a woman is not disqualified from receiving maternity allowance when she works in the maternity allowance period (either 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.
- 6.5 *Definition of “still-birth” for maternity allowance*
- 6.5.1 Section 35(6) of the Contributions and Benefits Act currently defines “confinement” as being –
- labour of the mother resulting in the issue of a living child; or
 - labour after 28 weeks of pregnancy resulting in the issue of a child (whether alive or dead).
- 6.5.2 Sub-paragraph (3) replaces reference to 28 weeks with reference to 24 weeks. This is in line with the definition of “still-birth” within the Civil Registration Act 1984 (of Tynwald) (see section 44 of that Act).
- 6.6 *Continuous employment rules for paternity allowance entitlement*
- 6.6.1 As well as satisfying certain conditions as to their relationship with the new-born child and the child's mother, to qualify for paternity allowance (birth) a person must –
1. work for an employer for the 26 weeks immediately preceding the 14th week before the child is expected to be born; and
 2. have average weekly earnings in the last 8 of those 26 weeks of not less than the lower earnings limit for National Insurance contributions purposes; and
 3. continue to work for the same employer from the end of that 26-week period until the day the child is born.
- 6.6.2 In the case of a paternity allowance (adoption) the person must-

1. work for an employer for the 26 weeks immediately preceding the 14th week before the person adopting the child is notified that they have been matched with a child; and
 2. have average weekly earnings in the last 8 of those 26 weeks of not less than the lower earnings limit for National Insurance contributions purposes; and
 3. continue to work for that employer from the end of that 26-week period until the day the child is placed for adoption.
- 6.6.3 The DHSS now wishes to relax the continuous employment rules 1. and 3. set out above to allow a person to qualify for paternity allowance even if they change employer during the periods in question.
- 6.6.4 Paragraph 12 amends section 171ZA of the Contributions and Benefits Act in relation to paternity allowance (birth) and paragraph 13 amends section 171ZB of that Act in relation to paternity allowance (adoption) to give legislative effect to this.
- 6.7 *Cases in which a person is to be allowed to work during the adoption allowance period without losing entitlement to benefit*
- 6.7.1 Sub-paragraph (2) of paragraph 21 of Schedule 1 amends section 171ZNA of the Contributions and Benefits Act. That section deals with the rate at which adoption allowance is payable and the period for which it is payable. The amendment made enables Regulations to be made allowing an occasional day's work to be performed in prescribed cases without resulting in the loss of any adoption allowance, in the same way as for maternity allowance (see paragraph 2.6.4 above).

7. Section 16 – Interpretation

- 7.1 Section 16 explains the meaning of “SSCBA 1992” as it appears in the Act.

8. Section 18 – Financial provisions

- 8.1 Section 18 provides that –

- any expenses incurred by the DHSS; and
- any increase in sums payable out of money provided from General Revenue under any other Act,

attributable to the Act shall be paid out of General Revenue.

9. Section 19 – Commencement

- 9.1 Section 19 provides for the dates on which the various provisions of the Work and Families Act 2006 applied to the Isle of Man by this Order are to come into force.
- 9.2 Section 19, section 16 (interpretation), section 18 (financial provision) and section 20 (short title of the Act) shall be deemed to have come into effect on the day the Act received Royal Assent.
- 9.3 The other provisions shall come into force (or shall be deemed to have done so) at the same time as in Great Britain by way of order by statutory instrument. Such an order -
- may make different provision for different purposes; and

- may include supplementary, incidental, saving or transitional provisions.

10. Section 20 – Short title

10.1 Section 20 provides that the Act’s short title is the “Work and Families Act 2006”.