

# **Parental Leave and Employment Protection Amendment Bill**

Government Bill

As reported from the Social Services Committee

## **Commentary**

### **Recommendation**

The Social Services Committee has examined the Parental Leave and Employment Protection Amendment Bill and recommends that it be passed by majority with the amendments shown.

### **Introduction**

The bill implements Government policy to extend the duration of paid parental leave from 12 to 14 weeks progressively over a 2-year period, and provide new maternity leave, partner's/paternity leave and paid leave entitlements to employees who have worked for the same employer for between 6 and 12 months. These employees are not currently covered by the Parental Leave and Employment Protection Act 1987 (the Act).<sup>1</sup> Further, the bill clarifies that, for the purposes of determining entitlements under the Act, employment of a teacher at more than one state or integrated school is to be treated as one employment.<sup>2</sup>

The proposed amendments to the Act further a number of objectives for supporting the birth or adoption of a child. These objectives include ensuring that the scheme is accessible to more employees, encouraging female workplace attachment, supporting families with

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<sup>1</sup> Explanatory Note, Parental Leave and Employment Protection Amendment Bill, p.1.

<sup>2</sup> Parliamentary Library, Bills digest No. 1107, *Parental Leave and Employment Protection Amendment Bill 2004*.

leave and job protection, supporting the health and wellbeing of new mothers and babies, and improving New Zealand's compliance with international human rights instruments that provide rights to paid maternity leave.<sup>3</sup>

One of the policy objectives of the bill is to better align New Zealand policy with standards for the length of paid maternity leave contained in International Labour Organisation (ILO) Convention 183 on maternity protection.<sup>4</sup>

### **Evaluation of scheme**

When the paid parental leave scheme was established in July 2002, Cabinet directed officials to evaluate the implementation and effectiveness of the scheme after one year, and report on proposals to enhance the scheme in terms of eligibility and possible alternative funding mechanisms.<sup>5</sup>

The bill was developed by the Department of Labour in consultation with several Government agencies. In 2003, the department conducted a review of the scheme and received 34 submissions in response to a consultation paper. The most frequently mentioned suggestions to improve the scheme were:

- extending paid parental leave to those who have changed jobs in the last 12 months
- extending the scheme to the self-employed
- extending the length of paid parental leave to 14 weeks.<sup>6</sup>

The department also commissioned Gravitas Research and Strategy to conduct an evaluation of the implementation of the scheme. The evaluation concluded that the implementation of the scheme has been smooth, with paid leave easily accessible, the impact on business has been predominantly positive or neutral, and nearly all mothers took the full 12 weeks paid leave.<sup>7</sup>

<sup>3</sup> Explanatory Note, Parental Leave and Employment Protection Amendment Bill, p.1.

<sup>4</sup> Department of Labour, Parental Leave and Employment Protection Amendment Bill, Report, 28 July 2004, p. 26.

<sup>5</sup> Parliamentary Library Bills digest No. 1107, *Parental Leave and Employment Protection Amendment Bill 2004*.

<sup>6</sup> Department of Labour, Parental Leave and Employment Protection Amendment Bill. Report, 28 July, p.1.

<sup>7</sup> Department of Labour, Parental Leave and Employment Protection Amendment Bill, Report, 28 July 2004, p.2.

The department advises that further work on the feasibility of extending paid leave to the self-employed is being undertaken this year.<sup>8</sup>

The committee is keen to see cover extended to the self-employed and was heartened to receive advice from the Minister that:

As part of this process officials are considering the overall framework, design, eligibility criteria and payment structure that could apply to self-employed people.

Policy development relating to the self-employed is a very high priority for me and I am committed to progressing this issue further in the near future to include self-employed parents as far as practicable.<sup>9</sup>

## Submissions

We received 11 submissions on the bill, the majority being in support of its general intention. Many of those who generally supported the bill wished to see some aspects changed. Suggested changes included extending the Act to cover self-employed women, those in part-time work of less than 10 hours per week, and seasonal, short-term and casual workers who are not in continuous employment for 6 months before giving birth.

Some submitters advocated a legislated right to breast-feeding breaks and appropriate facilities, because of the low voluntary introduction of such provisions by employers and to uphold ILO Convention 183 standards on maternity protection.

We acknowledge submitter concerns about provisions for breast-feeding breaks. Some members questioned whether a provision of this nature is within the scope of the bill, given that the policy objectives behind the bill are to support the health and wellbeing of new mothers and babies, but were advised that despite its merits breastfeeding breaks are not relevant to parental leave from employment in the workplace. The issue relates more to when a person has returned to work once leave has been taken.

Three submitters opposed the bill: one recommending that the current parental leave payment be recognised as a welfare benefit and made available to all new mothers; another suggesting that the Act should be replaced with an enhanced parental tax credit.

<sup>8</sup> Department of Labour, Parental Leave and Employment Protection Amendment Bill, Report, 28 July 2004, p.2.

<sup>9</sup> Letter to the Chairperson from the Associate Minister of Labour, 4 August 2004.

We note that the bill does not amend the policy intent of the Act, which is to provide taxpayer-funded paid parental leave to employees.

One submission recommended that the Pay and Employment Equity Unit should identify steps required to ensure that employers in the public service, public health and public education sectors comply with ILO Convention 183 on maternity protection by 2008.

The committee was urged to ensure that the Government makes information about the Act and amendments widely available, and in a variety of languages, so that workers become more aware of their right to paid parental leave. We have passed on this request to the department.

### **Duration of paid parental leave**

The amendments proposed in clauses 17 to 19 increase the entitlement for paid parental leave from 12 to 13 weeks if the birth of a child, or expected date of delivery or adoption of a child, is on or after 1 December 2004. Part 2 amendments increase the entitlement from 13 to 14 weeks for the birth of a child, expected delivery or adoption of a child on or after 1 December 2005.

Generally there was no opposition to an increase in the number of weeks of entitlement for paid leave or changes proposed to the commencement date. Some submitters advocated abandoning the phased approach in favour of an increase to 14 weeks leave on 1 December 2004.

### **New entitlements for employees with between 6 and 12 months service**

Under the current Act to be eligible for paid parental leave, maternity leave, partner's/paternity leave, and extended leave, an employee must have at least 12 month's service with the same employer for an average of 10 hours per week, including at least 1 hour in every week, or 40 hours in every month during the 12-month period.

The amendments proposed in clauses 8 to 10 of the bill provide that female employees who have worked for the same employer for at least an average of 10 hours per week for at least 6 months, but less than 12 months, are entitled to maternity leave and paid parental leave. The entitlement is to 13 weeks' leave from 1 December 2004,

increasing to 14 weeks from 1 December 2005. These employees are not, however, entitled to extended leave under the Act.

Clauses 10 to 13 amend the Act so that employees who have worked for the same employer for at least an average of 10 hours per week for at least 6 months, but less than 12 months, are entitled to 1 week's unpaid partner's/paternity leave. They are not entitled to extended leave. Clause 13 also allows partner's/paternity leave to be extended in particular cases where parental leave payments are transferred, or, in the case of a joint adoption, the employee who is eligible for partner's/paternity leave is nominated as primarily entitled to receive parental leave payments.

Unions and women's groups supported the extension of entitlements; employers and employer organisations opposed it. Some submitters did not distinguish between eligibility for maternity leave and eligibility for paid parental leave. Eligibility for maternity leave is interlinked with eligibility for paid parental leave.<sup>10</sup>

### **Submitter concerns about new entitlements**

Concern was expressed about compliance cost implications for employers required to keep jobs open for individuals employed for a relatively short period of time (between 6 and 12 months), especially in cases of fixed-term employment. This was seen to be potentially exposing employers to responsibility for extra parental leave entitlements. Another concern was that the bill will apply to temporary employees.

Some submitters argued that the bill should be extended to those in part-time work of less than 10 hours per week, and seasonal, short-term and casual workers who are not in continuous employment for 6 months before giving birth. One submitter reported that in 2002 the department had estimated 28.7 percent of female employees were ineligible for paid parental leave because they had not worked with the same employer for a year. A further 11 percent were ineligible because they did not work at least 10 hours per week with one employer. The submitter suggested that the minimum weekly hours threshold be removed so that eligibility could be extended to those employed by more than one employer.

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<sup>10</sup> Department of Labour Report. Parental Leave and Employment Protection Amendment Bill, Report, 28 July 2004, p. 8.

One submission argued that women with young children will have breaks from paid work and then be over-represented in temporary or part-time jobs once they return to paid employment. This could result in parents with more than one child being less likely to be eligible for paid parental leave.

Redefining continuous employment to allow for breaks of up to 3 months was also advocated. This measure was proposed as being of assistance to expectant mothers who have been dismissed or who find it difficult to obtain work as a result of the pregnancy.

### **Multiple employments**

Clause 7 proposes to amend section 2A of the Act to clarify the existing interpretation of how paid parental leave applies to teachers. This clause proposes that teachers who are employed by more than one board of trustees are treated as having only one employment for the purposes of the Act.

There was general support for this amendment, but some submitters felt that multiple employment could be applied to other areas also.

### **Submitter concern about multiple employments**

One submitter called for continuous employment within any part of the state sector to be treated as one employment. Another suggested that contract workers with continuous workforce attachment be eligible regardless of multiple employment arrangements.

The majority of the committee suggest that, as part of future reviews of the Act, the department gives consideration to what may be required to achieve coherence across employment sectors.

### **Transferring parental leave payments**

The existing Act enables eligible mothers, or the designated primary carer of an adopted child, to transfer parental leave payments to their eligible partner, if both partners meet the existing criteria.<sup>11</sup>

New section 19A allows for partner's/paternity leave to be extended where the mother or designated primary carer of a child transfers the right to parental leave payments to a spouse who has between 6 and 12 months' service. In such cases, the spouse's partner's/paternity

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<sup>11</sup> Department of Labour, Parental Leave and Employment Protection Amendment Bill, Report, 28 July 2004.

leave is extended so that it is the same as the period of the parental leave payments that are transferred. However, if both partners have between 6 and 12 months' service, the total amount of parental leave available to them is 13 weeks (rising to 14 weeks in 2005), not counting the first week of partner's/paternity leave.

Under new section 19B, if a person eligible for partner's/paternity leave with between 6 to 12 months' service adopts a child alone, or is nominated as primarily entitled to a parental leave payment (in the case of a joint adoption), the entitlement to partner's /paternity leave is extended to whichever is the shorter of 13 weeks (rising to 14 weeks in 2005) or the period during which the employee receives the parental leave payment.

### **Submitter concern about transferring parental leave payments**

Two submitters argued that, in this area, the bill discriminates against partners of biological mothers because eligibility is based on the employment status of the mother.<sup>12</sup>

Further, two submitters argued that leave and payment provisions should be able to be transferred to other caregivers such as grandparents and those looking after children under whāngai arrangements.

The department told us that the bill does not change the policy intent of the principal Act. The policy intent of the Act is to provide a primary entitlement to maternity leave and payment to the mother of a child to allow women to recover from pregnancy and birth. The Act gives effect to these objectives, which are proportional, and not discriminatory.<sup>13</sup>

### **Level of parental leave payment**

Clauses 20 and 21 propose amendments to sections 71M(2) and 72A(1) respectively and provide the new entitlement criteria and a new definition of "average weekly earnings". These proposed amendments are consequential on the other amendments proposed in the bill.

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<sup>12</sup> Department of Labour, Review of Paid Parental Leave Scheme, Consultation Document, May 2003, As reported in the Human Rights Commission submission, p. 5.

<sup>13</sup> Department of Labour Report, Parental Leave and Employment Protection Amendment Bill, 28 July 2004, p. 19.

**Submitter concern about parental leave payment**

Three submitters proposed that the level of payment should be increased. Reasons given were that the majority of workers face a large drop in income when they go on parental leave and Articles 2, 3 and 6 of ILO Convention 183 on maternity protection specify that payment should ensure a suitable standard of living and be no less than two-thirds of previous earnings. These standards are not necessarily being achieved through the current Act, especially in the case of women in high-earning brackets.

Two submitters argued that some families struggle to exist on the current rate. As a result, the mother or caregiver is likely to return to work early rather than take the full entitlement. A suggested solution is an increase in payment to 100 percent of previous earnings, capped at 80 percent of the average male wage.

We heard from the department that the bill does not amend the policy intent of the Act relating to the level of parental leave payment. The level of payment was set at \$325 per week in the Act, and an annual indexation adjustment applies.

**Concerns about possible discrimination**

Another submission raised a wider issue relating to eligibility for parental leave entitlements and sought clarification on whether the legislation could be interpreted to exclude lesbian, gay or transgender workers. We were advised that if a single gay, lesbian, or transgender person adopted a child, that person would become eligible for entitlements under the Act in the usual way. The ability of a same-sex couple to adopt a child jointly is not covered by the Adoption Act 1955, which allows only “spouses” to adopt a child jointly, where “spouse” has most recently been interpreted to mean an opposite sex partner in a legal marriage. If certain criteria are met, transgender persons may have their birth certificates altered to record their sex as their nominated sex.<sup>14</sup> In certain cases, persons may marry as their nominated sex and would be able to adopt children jointly with their spouses.

**Timing issues**

We recommend changes to clauses 2, 4 and 24 of the bill to clarify the entitlements of employees who have an expected date of delivery

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<sup>14</sup> Births, Deaths, and Marriages Registration Act 1995, Section 28.

after the commencement of the proposed changes to the bill but who give birth before their commencement. The recommended changes make it clear that these employees are able to take parental leave, and receive parental leave payments, before 1 December 2004 (or 2005 as the case may be). The recommended changes also enable employees with an expected date of delivery on or after 1 December 2004 to take special leave under the Act before that date.

The ACT party opposes tax payer funded paid parental leave.

## **Appendix**

### **Committee process**

The Parental Leave and Employment Protection Amendment Bill was referred to the committee on 26 May 2004. The closing date for submissions was 25 June 2004. We received and considered 11 submissions from interested groups. We heard oral submissions from six submitters. Hearing of evidence and consideration took 3 hours and 5 minutes.

We received advice from the Department of Labour and Parliamentary Counsel.

### **Committee membership**

Georgina Beyer (Chairperson)

Dr Muriel Newman (Deputy Chairperson)

Paul Adams

Sue Bradford

Judith Collins

Hon Taito Phillip Field

Bill Gudgeon

Moana Mackey

Katherine Rich

Hon Judith Tizard

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Parental Leave and  
Employment Protection Amendment

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

**New (majority)**

Subject to this Act,

Text inserted by a majority

<Subject to this Act,>

Words struck out by a majority

<u>Subject to this Act.>

Words inserted by a majority

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*Hon Ruth Dyson*

# Parental Leave and Employment Protection Amendment Bill

Government Bill

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**The Parliament of New Zealand enacts as follows:**

### **1 Title**

- (1) This Act is the Parental Leave and Employment Protection Amendment Act **2004**.
- (2) In this Act, the Parental Leave and Employment Protection Act 1987<sup>1</sup> is called "the principal Act".

<sup>1</sup> 1987 No 129

**2 Commencement****New (majority)**

(1AA) **Sections 4, 22, and 24**, come into force on the day after the date on which this Act receives the Royal assent.

- (1) Part 2 <<except for **section 24**>> comes into force on 1 December 2005. 5
- (2) The rest of this Act comes into force on 1 December 2004.

**Part 1**  
**Amendments that come into force on**  
**1 December 2004**

- 3 Purpose of this Part** 10
- The purpose of this Part is—
- (a) to clarify that the employment of a teacher in more than 1 State or integrated school (whether at the same time or consecutively) is 1 employment under the principal Act; and 15
- (b) to provide, for the period from 1 December 2004 to 30 November 2005, an entitlement to 13 weeks of maternity leave and parental leave payments for employees who have worked for their employer for at least an average of 10 hours a week for between 6 and 12 months; however these employees are not entitled to extended leave; and 20
- (c) to provide an entitlement to 1 week of unpaid partner's/paternity leave for employees who have worked for their employer for at least an average of 10 hours a week for between 6 and 12 months; however these employees are not entitled to extended leave; and 25
- (d) to allow extended partner's/paternity leave for the period of parental leave payments for certain employees who have worked for their employer for at least an average of 10 hours a week for between 6 and 12 months; and 30
- (e) to increase, for the period from 1 December 2004 to 30 November 2005, the duration of parental leave payments from 12 to 13 weeks. 35

**4 Application of this Part**

- (1) *<The amendments made by this Part apply>* *<This Part applies>* to an employee who takes parental leave from his or her employment in respect of a child if—
- (a) the expected date of delivery of the child is on or after 1 December 2004; or 5
  - (b) the child is born on or after 1 December 2004; or
  - (c) in the case of adoption, the date on which the employee or the employee’s spouse, with a view to adoption, assumes the care of the child, is on or after 1 December 2004. 10

**New (majority)**

- (2) An employee to whom this Part applies may, before 1 December 2004,—
- (a) give notice of a wish to take parental leave (under **section 22** if applicable) in which case the employee may begin his or her parental leave before 1 December 2004 as if this Part were already in force; and 15
  - (b) take special leave in accordance with section 15 of the principal Act; and
  - (c) apply for a parental leave payment under Part 7A of the principal Act as if this Part were already in force. 20

**5 Long Title**

The Long Title of the principal Act is amended by omitting the words “12 weeks”, and substituting the words “13 weeks”. 25

**6 Interpretation**

Section 2(3) of the principal Act is amended by adding the words “(or lesser period, as the case may be)”.

**7 Interpretation: multiple employments**

Section 2A of the principal Act is amended by adding, as subsections (2) and (3), the following subsections: 30

- “(2) For the purposes of determining the entitlement of a teacher to rights and benefits in respect of parental leave and parental leave payment, if the teacher, during a 12-month period (or

lesser period as the case may be), is employed by more than 1 Board of Trustees to work in more than 1 State school or integrated school (whether concurrently or consecutively), those employments must be treated as 1 employment.

- “(3) In **subsection (2)**,— 5
- “**Board of Trustees** means a Board of Trustees constituted under Part 9 of the Education Act 1989
- “**integrated school** has the same meaning as in section 145 of the Education Act 1989
- “**state school** has the same meaning as in section 2 of the Education Act 1989 10
- “**teacher** has the same meaning as in section 91A of the Education Act 1989.”
- 8 Entitlement of female employee to maternity leave** 15
- Section 7 of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:
- “(b) who, at the expected date of delivery, will have been in the employment of the same employer for at least an average of 10 hours a week over—
- “(i) the immediately preceding 12 months; or 20
- “(ii) her period of employment, if it is shorter than the immediately preceding 12 months but not shorter than the immediately preceding 6 months,—”.
- 9 Entitlement of adoptive mother to maternity leave** 25
- Section 8(1) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:
- “(b) who, at the date on which she, with a view to adoption, first assumes the care of the child, will have been in the employment of the same employer for at least an average of 10 hours a week over— 30
- “(i) the immediately preceding 12 months; or
- “(ii) her period of employment, if it is shorter than the immediately preceding 12 months but not shorter than the immediately preceding 6 months,—”.
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**10 Duration of maternity leave**

(1) Section 9 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

“(1) Subject to subsection (2), maternity leave must be taken in 1 continuous period not exceeding— 5

“(a) 14 weeks if **section 7(b)(i)** or **section 8(1)(b)(i)** applies to the employee; or

“(b) 13 weeks if **section 7(b)(ii)** or **section 8(1)(b)(ii)** applies to the employee.”

(2) Section 9 of the principal Act is amended by repealing subsection (3), and substituting the following subsection: 10

“(3) A period of maternity leave in excess of 13 or 14 weeks (as the case may be) taken by a female employee under subsection (2) is to be treated as maternity leave for the purposes of this Act, but must not be taken into account in assessing under section 26 any period of extended leave to which the female employee or her spouse may be entitled under this Act.” 15

**11 Entitlement of employee to partner’s/paternity leave**

Section 17 of the principal Act is amended by repealing paragraph (c), and substituting the following paragraph: 20

“(c) who, at the expected date of delivery for that child, will have been in the employment of the same employer for at least an average of 10 hours a week over—

“(i) the immediately preceding 12 months; or

“(ii) the employee’s period of employment, if it is shorter than the immediately preceding 12 months but not shorter than the immediately preceding 6 months,—”. 25

**12 Entitlement of other adoptive parent to partner’s/paternity leave** 30

Section 18(1) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

“(b) who, at the date on which he or she, with a view to adoption, first assumes the care of the child, will have been in the employment of the same employer for at least an average of 10 hours a week over— 35

- “(i) the immediately preceding 12 months; or
- “(ii) the employee’s period of employment, if it is shorter than the immediately preceding 12 months but not shorter than the immediately preceding 6 months,—”.

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**13 New sections 19 to 19B substituted**

The principal Act is amended by repealing section 19, and substituting the following sections:

**“19 Duration of partner’s/paternity leave**

Partner’s/paternity leave must be taken in 1 continuous period not exceeding—

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“(a) 2 weeks if **section 17(c)(i)** or **section 18(1)(b)(i)** applies to the employee; or

“(b) 1 week if **section 17(c)(ii)** or **section 18(1)(b)(ii)** applies to the employee.

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**“19A Extension of partner’s/paternity leave entitlements in certain circumstances**

“(1) This section applies if—

“(a) an employee (**employee A**) is entitled to—

“(i) maternity leave under **section 7(b)** or **section 8(1)(b)**;

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or

“(ii) partner’s/paternity leave under **section 18(1)(b)**; and

“(b) employee A’s spouse (**employee B**) is entitled to partner’s/paternity leave under **section 17(c)(ii)** or **18(1)(b)(ii)**; and

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“(c) employee A transfers all or part of his or her entitlement to parental leave payments to employee B under section 71E.

“(2) Employee B’s entitlement to partner’s/paternity leave is extended so that it is the same as the period of parental leave payments transferred to him or her.

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“(3) However, if **section 7(b)(ii)** or **section 8(1)(b)(ii)** or **section 18(1)(b)(ii)** applies to employee A, the total period formed by adding together maternity leave or partner’s/paternity leave taken by employee A and extended partner’s/paternity leave taken by employee B may not exceed 13 weeks.

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“(4) The taking by employee B of partner’s/paternity leave under **section 19** does not reduce the leave entitlements of either employee under **subsection (3)**.

**19B Extension of partner’s/paternity leave of adoptive parent**

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“(1) This section applies if **section 18(1)(b)(ii)** applies to an employee and he or she—

“(a) assumes alone, with a view to adoption, the care of a child; or

“(b) is nominated as primarily entitled to a parental leave payment under section 71H.

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“(2) The employee’s entitlement to partner’s/paternity leave is the shorter of the following:

“(a) 13 weeks (including any period of partner’s/paternity leave to which the employee is entitled under **section 19**):

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“(b) if **subsection (1)(b)** applies, the period during which the employee receives the parental leave payment.”

**14 Duration of extended leave**

(1) Section 26(1) of the principal Act is amended by omitting the expression “subsection (2)”, and substituting the words “subsections (2) and (4)”.

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(2) Section 26 of the principal Act is amended by repealing subsection (4), and substituting the following subsection:

“(4) The taking by an employee of a period of partner’s/paternity leave affects the period of extended leave to which the employee and his or her spouse is entitled in accordance with this Act as follows:

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“(a) the period is not reduced by the taking of partner’s/paternity leave referred to in **section 19**:

“(b) the period is reduced by the period of extended partner’s/paternity leave taken under **section 19A** or **section 19B**.”

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**15 Early ending and extension of parental leave**

Section 45(4) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

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“(b) in the case of a period of partner’s/paternity leave, the duration of partner’s/paternity leave exceeds—

- “(i) 2 weeks if **section 17(c)(i)** or **section 18(1)(b)(i)** applies to the employee; or
- “(ii) 1 week if **section 17(c)(ii)** or **section 18(1)(b)(ii)** applies to the employee.”

<b>16</b>	<b>Role of Labour Inspectors</b>	5
	Section 70A(1)(a) of the principal Act is amended by inserting, after the word “period”, the words “(or lesser period, as the case may be)”.	
<b>17</b>	<b>Purpose</b>	10
	Section 71A of the principal Act is amended by omitting the words “12 weeks”, and substituting the words “13 weeks”.	
<b>18</b>	<b>Duration of parental leave payment</b>	
(1)	Section 71J(a) of the principal Act is amended by omitting the words “12 weeks”, and substituting the words “13 weeks”.	
(2)	Section 71J(b) of the principal Act is amended by omitting the words “12 weeks”, and substituting the words “13 weeks”.	15
<b>19</b>	<b>End of parental leave payment</b>	
	Section 71L(1)(a) of the principal Act is amended by omitting the words “12 weeks”, and substituting the words “13 weeks”.	20
<b>20</b>	<b>Amount of parental leave payment</b>	
	Section 71M(2) of the principal Act is amended by repealing the definition of <b>average weekly earnings</b> , and substituting the following definition:	
	“ <b>average weekly earnings</b> means one fifty-second of the employee’s gross earnings during the year ending with the expected date of delivery (or, in the case of adoption, the date on which the employee assumes the care of the child with a view to adoption), except that—	25
	“(a) if section 72A applies, the divisor of 52 must be reduced by the number of complete weeks during which the employee was absent from work on leave without pay in a circumstance described in subsection (2) of that section:	30

“(b) if the employee has been in the employment of his or her employer for a period that is shorter than 12 months ending on the expected date of delivery (or, in the case of adoption, the date on which the employee assumes the care of the child with a view to adoption), the divisor of 52 must be reduced so that it represents the number of complete or part weeks that the employee worked for the employer in the period of employment until that date”.

**21 Eligibility criteria based on average hours of work and allowing for periods of authorised leave** 10

Section 72A(1) of the principal Act is amended by inserting, after the word “period”, the words “(or lesser period, as the case may be)”.

**22 Giving of notice: transitional provision** 15

(1) This section applies to an employee who is entitled to parental leave as a result of the commencement of this Part and who is unable to give the notice required under—

(a) section 31(1) of the principal Act because there is less than 3 months between the commencement of this Part and the expected date of delivery; or 20

(b) section 33(a) or (b) of the principal Act within 14 days of receiving the relevant notice or of the relevant order being made, because the notice was received or the order was made before the commencement of this Part. 25

(2) An employee to whom this section applies:

(a) is not required to give notice under section 31 or section 33 within the time periods referred to in those sections, but must give the notice as soon as practicable: 30

(b) may give notice under section 31 or 33 (as applicable) before the commencement of this Part as if this Part were already in force.

## Part 2

### Amendments that come into force on 1 December 2005

- 23 Purpose of this Part** 5
- The purpose of this Part is to increase, from 1 December 2005,—
- (a) the duration of maternity leave from 13 to 14 weeks for employees who have worked for their employer for at least an average of 10 hours a week for between 6 and 12 months; however, these employees are not entitled to extended leave; and 10
  - (b) the duration of parental leave payments from 13 to 14 weeks.
- 24 Application of this Part**
- (1) *<The amendments made by this Part apply>* *<This Part applies>* to an employee who takes parental leave from his or her employment in respect of a child if— 15
- (a) the expected date of delivery of the child is on or after 1 December 2005; or
  - (b) the child is born on or after 1 December 2005; or 20
  - (c) in the case of adoption, the date on which the employee, or the employee's spouse, with a view to adoption, assumes the care of the child is on or after 1 December 2005.
- New (majority)**
- (2) An employee to whom this Part applies may, before 1 December 2005,— 25

  - (a) give notice of a wish to take parental leave (under **section 22** if applicable) in which case the employee may begin his or her parental leave before 1 December 2005 as if this Part were already in force; and 30
  - (b) apply for a parental leave payment under Part 7A of the principal Act as if this Part were already in force.

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- 25 Long Title**  
The Long Title of the principal Act is amended by omitting the words “13 weeks”, and substituting the words “14 weeks”.
- 26 Duration of maternity leave** 5  
(1) **Section 9(1)** of the principal Act is amended by repealing subsection (1), and substituting the following subsection:  
“(1) Maternity leave must be taken in 1 continuous period not exceeding 14 weeks, subject to subsection (2).”
- (2) Section 9(3) of the principal Act is amended by omitting the words “13 or 14 weeks (as the case may be)”, and substituting the words “14 weeks”. 10
- 27 Extension of partner’s/paternity leave entitlements in certain circumstances**  
**Section 19A(3)** of the principal Act is amended by omitting the words “13 weeks”, and substituting the words “14 weeks”. 15
- 28 Extension of partner’s/paternity leave of adoptive parent**  
Section 19B(2) of the principal Act is amended by omitting the words “13 weeks”, and substituting the words “14 weeks”. 20
- 29 Purpose**  
Section 71A of the principal Act is amended by omitting the words “13 weeks”, and substituting the words “14 weeks”.
- 30 Duration of parental leave payment**  
(1) Section 71J(a) of the principal Act is amended by omitting the words “13 weeks”, and substituting the words “14 weeks”. 25  
(2) Section 71J(b) of the principal Act is amended by omitting the words “13 weeks”, and substituting the words “14 weeks”.
- 31 End of parental leave payment**  
Section 71L(1)(a) of the principal Act is amended by omitting the words “13 weeks”, and substituting the words “14 weeks”. 30
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**Parental Leave and Employment  
Protection Amendment**

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**Legislative history**

17 May 2004

Introduction (Bill 136-1)

26 May 2004

First reading and referral to the Social Services Com-  
mittee

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