

*These notes refer to the Employment Act 2002  
(c.22) which received Royal Assent on 8 July 2002*

## **EMPLOYMENT ACT 2002**

---

### **EXPLANATORY NOTES**

#### **COMMENTARY ON SECTIONS**

#### **Part One: Statutory Leave and Pay**

#### ***Chapter One: Paternity and adoption leave and pay***

#### **Adoption leave and Statutory Adoption Pay**

#### ***Section 21: Funding of employers' liabilities: Statutory Maternity Pay***

53. Subsection (1) of this section inserts a new section 167 in the Social Security Contributions and Benefits Act 1992, which provides for employers to recover most or all of the Statutory Maternity Pay they have paid out.
54. The inserted section 167, as now, provides for regulations to be made so that employers can recover 92% of the amount paid out by way of Statutory Maternity Pay and for small employers to recover all of the SMP paid out plus an additional amount in compensation for the employers' share of national insurance contributions paid on SMP. As now, the meaning of "small employer" will be defined in regulations by reference to the amount of contribution payments made by an employer.
55. However, subsection (5) of the inserted section 167 provides for regulations to be made so that employers can recover SMP from tax and other payments due to the Inland Revenue and not just from contributions payments as now. In addition regulations will provide for employers to apply for advance payments of SMP if necessary where the amount they have to pay out in SMP exceeds allowable payments due to the Inland Revenue. Regulations (under subsection (5)(c)) will also provide for the Inland Revenue to recover any overpayments generated by such advance payments. This provision aligns SMP recovery with similar provisions being introduced for Statutory Paternity Pay and Statutory Adoption Pay.
56. Subsection (2) makes corresponding provision for Northern Ireland.