
Changes to legislation: There are currently no known outstanding effects for the Employment Relations Act 1999, Part I. (See end of Document for details)

SCHEDULES

SCHEDULE 4

LEAVE FOR FAMILY REASONS ETC

PART I

MATERNITY LEAVE AND PARENTAL LEAVE

NEW PART VIII OF EMPLOYMENT RIGHTS ACT 1996

“PART VIII

CHAPTER I

MATERNITY LEAVE

- 71 (1) An employee may, provided that she satisfies any conditions which may be prescribed, be absent from work at any time during an ordinary maternity leave period.
- (2) An ordinary maternity leave period is a period calculated in accordance with regulations made by the Secretary of State.
- (3) Regulations under subsection (2)—
- (a) shall secure that no ordinary maternity leave period is less than 18 weeks;
 - (b) may allow an employee to choose, subject to any prescribed restrictions, the date on which an ordinary maternity leave period starts.
- (4) Subject to section 74, an employee who exercises her right under subsection (1)—
- (a) is entitled to the benefit of the terms and conditions of employment which would have applied if she had not been absent,
 - (b) is bound by any obligations arising under those terms and conditions (except in so far as they are inconsistent with subsection (1)), and
 - (c) is entitled to return from leave to the job in which she was employed before her absence.
- (5) In subsection (4)(a) “terms and conditions of employment”—
- (a) includes matters connected with an employee’s employment whether or not they arise under her contract of employment, but
 - (b) does not include terms and conditions about remuneration.
- (6) The Secretary of State may make regulations specifying matters which are, or are not, to be treated as remuneration for the purposes of this section.

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- (7) An employee's right to return under subsection (4)(c) is a right to return—
- (a) with her seniority, pension rights and similar rights as they would have been if she had not been absent (subject to paragraph 5 of Schedule 5 to the ^{M1}Social Security Act 1989 (equal treatment under pension schemes: maternity)), and
 - (b) on terms and conditions not less favourable than those which would have applied if she had not been absent.

Compulsory maternity leave.

- 72 (1) An employer shall not permit an employee who satisfies prescribed conditions to work during a compulsory maternity leave period.
- (2) A compulsory maternity leave period is a period calculated in accordance with regulations made by the Secretary of State.
- (3) Regulations under subsection (2) shall secure—
- (a) that no compulsory leave period is less than two weeks, and
 - (b) that every compulsory maternity leave period falls within an ordinary maternity leave period.
- (4) Subject to subsection (5), any provision of or made under the ^{M2}Health and Safety at Work etc. Act 1974 shall apply in relation to the prohibition under subsection (1) as if it were imposed by regulations under section 15 of that Act.
- (5) Section 33(1)(c) of the 1974 Act shall not apply in relation to the prohibition under subsection (1); and an employer who contravenes that subsection shall be—
- (a) guilty of an offence, and
 - (b) liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Additional maternity leave.

- 73 (1) An employee who satisfies prescribed conditions may be absent from work at any time during an additional maternity leave period.
- (2) An additional maternity leave period is a period calculated in accordance with regulations made by the Secretary of State.
- (3) Regulations under subsection (2) may allow an employee to choose, subject to prescribed restrictions, the date on which an additional maternity leave period ends.
- (4) Subject to section 74, an employee who exercises her right under subsection (1)—
- (a) is entitled, for such purposes and to such extent as may be prescribed, to the benefit of the terms and conditions of employment which would have applied if she had not been absent,
 - (b) is bound, for such purposes and to such extent as may be prescribed, by obligations arising under those terms and conditions (except in so far as they are inconsistent with subsection (1)), and
 - (c) is entitled to return from leave to a job of a prescribed kind.
- (5) In subsection (4)(a) “terms and conditions of employment”—
- (a) includes matters connected with an employee's employment whether or not they arise under her contract of employment, but

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- (b) does not include terms and conditions about remuneration.
- (6) The Secretary of State may make regulations specifying matters which are, or are not, to be treated as remuneration for the purposes of this section.
- (7) The Secretary of State may make regulations making provision, in relation to the right to return under subsection (4)(c), about—
 - (a) seniority, pension rights and similar rights;
 - (b) terms and conditions of employment on return.

Redundancy and dismissal.

- 74 (1) Regulations under section 71 or 73 may make provision about redundancy during an ordinary or additional maternity leave period.
- (2) Regulations under section 71 or 73 may make provision about dismissal (other than by reason of redundancy) during an ordinary or additional maternity leave period.
- (3) Regulations made by virtue of subsection (1) or (2) may include—
 - (a) provision requiring an employer to offer alternative employment;
 - (b) provision for the consequences of failure to comply with the regulations (which may include provision for a dismissal to be treated as unfair for the purposes of Part X).
- (4) Regulations under section 73 may make provision—
 - (a) for section 73(4)(c) not to apply in specified cases, and
 - (b) about dismissal at the conclusion of an additional maternity leave period.

Sections 71 to 73: supplemental.

- 75 (1) Regulations under section 71, 72 or 73 may—
 - (a) make provision about notices to be given, evidence to be produced and other procedures to be followed by employees and employers;
 - (b) make provision for the consequences of failure to give notices, to produce evidence or to comply with other procedural requirements;
 - (c) make provision for the consequences of failure to act in accordance with a notice given by virtue of paragraph (a);
 - (d) make special provision for cases where an employee has a right which corresponds to a right under this Chapter and which arises under her contract of employment or otherwise;
 - (e) make provision modifying the effect of Chapter II of Part XIV (calculation of a week's pay) in relation to an employee who is or has been absent from work on ordinary or additional maternity leave;
 - (f) make provision applying, modifying or excluding an enactment, in such circumstances as may be specified and subject to any conditions specified, in relation to a person entitled to ordinary, compulsory or additional maternity leave;
 - (g) make different provision for different cases or circumstances.
- (2) In sections 71 to 73 “prescribed” means prescribed by regulations made by the Secretary of State.

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CHAPTER II

PARENTAL LEAVE

Entitlement to parental leave.

- 76 (1) The Secretary of State shall make regulations entitling an employee who satisfies specified conditions—
- (a) as to duration of employment, and
 - (b) as to having, or expecting to have, responsibility for a child,
- to be absent from work on parental leave for the purpose of caring for a child.
- (2) The regulations shall include provision for determining—
- (a) the extent of an employee's entitlement to parental leave in respect of a child;
 - (b) when parental leave may be taken.
- (3) Provision under subsection (2)(a) shall secure that where an employee is entitled to parental leave in respect of a child he is entitled to a period or total period of leave of at least three months; but this subsection is without prejudice to any provision which may be made by the regulations for cases in which—
- (a) a person ceases to satisfy conditions under subsection (1);
 - (b) an entitlement to parental leave is transferred.
- (4) Provision under subsection (2)(b) may, in particular, refer to—
- (a) a child's age, or
 - (b) a specified period of time starting from a specified event.
- (5) 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) require parental leave to be taken as a single period of absence in all cases or in specified cases;
 - (c) require parental leave to be taken as a series of periods of absence in all cases or in specified cases;
 - (d) require all or specified parts of a period of parental leave to be taken at or by specified times;
 - (e) make provision about the postponement by an employer of a period of parental leave which an employee wishes to take;
 - (f) specify a minimum or maximum period of absence which may be taken as part of a period of parental leave.
 - (g) specify a maximum aggregate of periods of parental leave which may be taken during a specified period of time.

Rights during and after parental leave.

- 77 (1) Regulations under section 76 shall provide—
- (a) that an employee who is absent on parental leave is entitled, for such purposes and to such extent as may be prescribed, to the benefit of the terms and conditions of employment which would have applied if he had not been absent,
 - (b) that an employee who is absent on parental leave is bound, for such purposes and to such extent as may be prescribed, by any obligations arising under

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- those terms and conditions (except in so far as they are inconsistent with section 76(1)), and
- (c) that an employee who is absent on parental leave is entitled, subject to section 78(1), to return from leave to a job of such kind as the regulations may specify.
- (2) In subsection (1)(a) “terms and conditions of employment”—
- (a) includes matters connected with an employee’s employment whether or not they arise under a contract of employment, but
- (b) does not include terms and conditions about remuneration.
- (3) Regulations under section 76 may specify matters which are, or are not, to be treated as remuneration for the purposes of subsection (2)(b) above.
- (4) The regulations may make provision, in relation to the right to return mentioned in subsection (1)(c), about—
- (a) seniority, pension rights and similar rights;
- (b) terms and conditions of employment on return.

Special cases.

- 78 (1) Regulations under section 76 may make provision—
- (a) about redundancy during a period of parental leave;
- (b) about dismissal (other than by reason of redundancy) during a period of parental leave.
- (2) Provision by virtue of subsection (1) may include—
- (a) provision requiring an employer to offer alternative employment;
- (b) provision for the consequences of failure to comply with the regulations (which may include provision for a dismissal to be treated as unfair for the purposes of Part X).
- (3) Regulations under section 76 may provide for an employee to be entitled to choose to exercise all or part of his entitlement to parental leave—
- (a) by varying the terms of his contract of employment as to hours of work, or
- (b) by varying his normal working practice as to hours of work,
- in a way specified in or permitted by the regulations for a period specified in the regulations.
- (4) Provision by virtue of subsection (3)—
- (a) may restrict an entitlement to specified circumstances;
- (b) may make an entitlement subject to specified conditions (which may include conditions relating to obtaining the employer’s consent);
- (c) may include consequential and incidental provision.
- (5) Regulations under section 76 may make provision permitting all or part of an employee’s entitlement to parental leave in respect of a child to be transferred to another employee in specified circumstances.
- (6) The reference in section 77(1)(c) to absence on parental leave includes, where appropriate, a reference to a continuous period of absence attributable partly to maternity leave and partly to parental leave.

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- (7) Regulations under section 76 may provide for specified provisions of the regulations not to apply in relation to an employee if any provision of his contract of employment—
- (a) confers an entitlement to absence from work for the purpose of caring for a child, and
 - (b) incorporates or operates by reference to all or part of a collective agreement, or workforce agreement, of a kind specified in the regulations.

Supplemental.

- 79 (1) Regulations under section 76 may, in particular—
- (a) make provision about notices to be given and evidence to be produced by employees to employers, by employers to employees, and by employers to other employers;
 - (b) make provision requiring employers or employees to keep records;
 - (c) make provision about other procedures to be followed by employees and employers;
 - (d) make provision (including provision creating criminal offences) specifying the consequences of failure to give notices, to produce evidence, to keep records or to comply with other procedural requirements;
 - (e) make provision specifying the consequences of failure to act in accordance with a notice given by virtue of paragraph (a);
 - (f) make special provision for cases where an employee has a right which corresponds to a right conferred by the regulations and which arises under his contract of employment or otherwise;
 - (g) make provision applying, modifying or excluding an enactment, in such circumstances as may be specified and subject to any conditions specified, in relation to a person entitled to parental leave;
 - (h) make different provision for different cases or circumstances.
- (2) The regulations may make provision modifying the effect of Chapter II of Part XIV (calculation of a week's pay) in relation to an employee who is or has been absent from work on parental leave.
- (3) Without prejudice to the generality of section 76, the regulations may make any provision which appears to the Secretary of State to be necessary or expedient—
- (a) for the purpose of implementing Council Directive [96/34/EC](#) on the framework agreement on parental leave, or
 - (b) for the purpose of dealing with any matter arising out of or related to the United Kingdom's obligations under that Directive.

Complaint to employment tribunal.

- 80 (1) An employee may present a complaint to an employment tribunal that his employer—
- (a) has unreasonably postponed a period of parental leave requested by the employee, or
 - (b) has prevented or attempted to prevent the employee from taking parental leave.
- (2) An employment tribunal shall not consider a complaint under this section unless it is presented—
- (a) before the end of the period of three months beginning with the date (or last date) of the matters complained of, or

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- (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.
- (3) Where an employment tribunal finds a complaint under this section well-founded it—
 - (a) shall make a declaration to that effect, and
 - (b) may make an award of compensation to be paid by the employer to the employee.
- (4) The amount of compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to—
 - (a) the employer’s behaviour, and
 - (b) any loss sustained by the employee which is attributable to the matters complained of.”

Marginal Citations

M1 1989 c. 24.

M2 1974 c. 37.

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M1 1989 c. 24.

M2 1974 c. 37.

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