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STATUTORY INSTRUMENTS

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**1999 No. 3312**

**The Maternity and Parental Leave etc. Regulations 1999**

**PART IV**

**PROVISIONS APPLICABLE IN RELATION  
TO MORE THAN ONE KIND OF ABSENCE**

**Application of terms and conditions during periods of leave**

17. An employee who takes <sup>F1</sup>... parental leave—
- (a) is entitled, during the period of leave, to the benefit of her employer's implied obligation to her of trust and confidence and any terms and conditions of her employment relating to—
    - (i) notice of the termination of the employment contract by her employer;
    - (ii) compensation in the event of redundancy, or
    - (iii) disciplinary or grievance procedures;
  - (b) is bound, during that period, by her implied obligation to her employer of good faith and any terms and conditions of her employment relating to—
    - (i) notice of the termination of the employment contract by her;
    - (ii) the disclosure of confidential information;
    - (iii) the acceptance of gifts or other benefits, or
    - (iv) the employee's participation in any other business.

**F1** Words in [reg. 17](#) omitted (23.7.2008 with effect in accordance with reg. 2 of the amending S.I.) by virtue of [The Maternity and Parental Leave etc. and the Paternity and Adoption Leave \(Amendment\) Regulations 2008 \(S.I. 2008/1966\)](#), regs. 1, [4\(2\)](#)

**[<sup>F2</sup>Right to return after maternity or parental leave**

**18.—(1)** An employee who returns to work after a period of ordinary maternity leave, or a period of parental leave of four weeks or less, which was—

(a) an isolated period of leave, or

[<sup>F3</sup>(b) the last of two or more consecutive periods of statutory leave which did not include—

(i) any period of parental leave of more than four weeks; or

(ii) any period of statutory leave which when added to any other period of statutory leave (excluding parental leave) taken in relation to the same child means that the total amount of statutory leave taken in relation to that child totals more than 26 weeks,]

is entitled to return to the job in which she was employed before her absence.

(2) An employee who returns to work after—

- (a) a period of additional maternity leave, or a period of parental leave of more than four weeks, whether or not preceded by another period of statutory leave, or
- (b) a period of ordinary maternity leave, or a period of parental leave of four weeks or less, not falling within the description in paragraph (1)(a) or (b) above,

is entitled to return from leave to the job in which she was employed before her absence or, if it is not reasonably practicable for the employer to permit her to return to that job, to another job which is both suitable for her and appropriate for her to do in the circumstances.

(3) The reference in paragraphs (1) and (2) to the job in which an employee was employed before her absence is a reference to the job in which she was employed—

- (a) if her return is from an isolated period of statutory leave, immediately before that period began;
- (b) if her return is from consecutive periods of statutory leave, immediately before the first such period.

(4) This regulation does not apply where regulation 10 applies.]

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| <p><b>F2</b> Regs. 18, 18A substituted for reg. 18 (24.11.2002 with effect in accordance with reg. 2 of the amending S.I.) by <a href="#">The Maternity and Parental Leave (Amendment) Regulations 2002 (S.I. 2002/2789)</a>, regs. 1(1), <b>12</b></p> <p><b>F3</b> Reg. 18(1)(b) substituted (1.12.2014) by <a href="#">The Maternity and Parental Leave etc. (Amendment) Regulations 2014 (S.I. 2014/3221)</a>, regs. 1(2), <b>5</b></p> |
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## [<sup>F2</sup>Incidents of the right to return

**18A.**—(1) An employee’s right to return under regulation 18(1) or (2) is a right to return—

- [<sup>F4</sup>(a) with her seniority, pension rights and similar rights as they would have been if she had not been absent, and]
- (b) on terms and conditions not less favourable than those which would have applied if she had not been absent.

[<sup>F5</sup>(2) In the case of accrual of rights under an employment-related benefit scheme within the meaning given by Schedule 5 to the Social Security Act 1989, nothing in paragraph (1)(a) concerning the treatment of additional maternity leave shall be taken to impose a requirement which exceeds the requirements of paragraphs 5 and 6 of that Schedule.]

(3) The provisions [<sup>F6</sup>in paragraph (1)] for an employee to be treated as if she had not been absent refer to her absence—

- (a) if her return is from an isolated period of statutory leave, since the beginning of that period;
- (b) if her return is from consecutive periods of statutory leave, since the beginning of the first such period.]

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| <p><b>F2</b> Regs. 18, 18A substituted for reg. 18 (24.11.2002 with effect in accordance with reg. 2 of the amending S.I.) by <a href="#">The Maternity and Parental Leave (Amendment) Regulations 2002 (S.I. 2002/2789)</a>, regs. 1(1), <b>12</b></p> <p><b>F4</b> Reg. 18A(1)(a) substituted (23.7.2008 with effect in accordance with reg. 2 of the amending S.I.) by <a href="#">The Maternity and Parental Leave etc. and the Paternity and Adoption Leave (Amendment) Regulations 2008 (S.I. 2008/1966)</a>, regs. 1, <b>5(a)</b></p> <p><b>F5</b> Reg. 18A(2) substituted (23.7.2008 with effect in accordance with reg. 2 of the amending S.I.) by <a href="#">The Maternity and Parental Leave etc. and the Paternity and Adoption Leave (Amendment) Regulations 2008 (S.I. 2008/1966)</a>, regs. 1, <b>5(b)</b></p> |
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**F6** Words in reg. 18A(3) substituted (23.7.2008 with effect in accordance with reg. 2 of the amending S.I.) by [The Maternity and Parental Leave etc. and the Paternity and Adoption Leave \(Amendment\) Regulations 2008 \(S.I. 2008/1966\)](#), regs. 1, **5(c)**

**Protection from detriment**

**19.**—(1) An employee is entitled under section 47C of the 1996 Act not to be subjected to any detriment by any act, or any deliberate failure to act, by her employer done for any of the reasons specified in paragraph (2).

- (2) The reasons referred to in paragraph (1) are that the employee—
  - (a) is pregnant;
  - (b) has given birth to a child;
  - (c) is the subject of a relevant requirement, or a relevant recommendation, as defined by section 66(2) of the 1996 Act;
  - (d) took, sought to take or availed herself of the benefits of, ordinary maternity leave [<sup>F7</sup>or additional maternity leave];
  - (e) took or sought to take—
    - <sup>F8</sup>(i) . . . . .
    - (ii) parental leave, or
    - (iii) time off under section 57A of the 1996 Act;
  - [<sup>F9</sup>(ee) failed to return after a period of ordinary or additional maternity leave in a case where—
    - (i) the employer did not notify her, in accordance with regulation 7(6) and (7) or otherwise, of the date on which the period in question would end, and she reasonably believed that that period had not ended, or
    - (ii) the employer gave her less than 28 days' notice of the date on which the period in question would end, and it was not reasonably practicable for her to return on that date;]
  - [<sup>F10</sup>(eee) undertook, considered undertaking or refused to undertake work in accordance with regulation 12A;]
  - (f) declined to sign a workforce agreement for the purpose of these Regulations, or
  - (g) being—
    - (i) a representative of members of the workforce for the purposes of Schedule 1, or
    - (ii) a candidate in an election in which any person elected will, on being elected, become such a representative,performed (or proposed to perform) any functions or activities as such a representative or candidate.

(3) For the purposes of paragraph (2)(d), a woman avails herself of the benefits of ordinary maternity leave if, during her ordinary maternity leave period, she avails herself of the benefit of any of the terms and conditions of her employment preserved by section 71 of the 1996 Act [<sup>F11</sup>and regulation 9] during that period.

[<sup>F12</sup>(3A) For the purposes of paragraph (2)(d), a woman avails herself of the benefits of additional maternity leave if, during her additional maternity leave period, she avails herself of the benefit of any of the terms and conditions of her employment preserved by section 73 of the 1996 Act and regulation 9 during that period.]

(4) Paragraph (1) does not apply in a case where the detriment in question amounts to dismissal within the meaning of Part X of the 1996 Act.

(5) Paragraph (2)(b) only applies where the act or failure to act takes place during the employee's ordinary or additional maternity leave period.

(6) For the purposes of paragraph (5)—

- (a) where an act extends over a period, the reference to the date of the act is a reference to the last day of that period, and
- (b) a failure to act is to be treated as done when it was decided on.

(7) For the purposes of paragraph (6), in the absence of evidence establishing the contrary an employer shall be taken to decide on a failure to act—

- (a) when he does an act inconsistent with doing the failed act, or
- (b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it were to be done.

- F7** Words in [reg. 19\(2\)\(d\)](#) inserted (23.7.2008 with effect in accordance with reg. 2 of the amending S.I.) by [The Maternity and Parental Leave etc. and the Paternity and Adoption Leave \(Amendment\) Regulations 2008 \(S.I. 2008/1966\)](#), regs. 1, **6(a)**
- F8** [Reg. 19\(2\)\(e\)\(i\)](#) omitted (23.7.2008 with effect in accordance with reg. 2 of the amending S.I.) by virtue of [The Maternity and Parental Leave etc. and the Paternity and Adoption Leave \(Amendment\) Regulations 2008 \(S.I. 2008/1966\)](#), regs. 1, **6(b)**
- F9** [Reg. 19\(2\)\(ee\)](#) inserted (24.11.2002) by [The Maternity and Parental Leave \(Amendment\) Regulations 2002 \(S.I. 2002/2789\)](#), regs. 1(1), **13(a)**
- F10** [Reg. 19\(2\)\(eee\)](#) inserted (1.10.2006 with effect in accordance with reg. 2 of the amending S.I.) by [The Maternity and Parental Leave etc. and the Paternity and Adoption Leave \(Amendment\) Regulations 2006 \(S.I. 2006/2014\)](#), regs. 1, **10**
- F11** Words in [reg. 19\(3\)](#) inserted (24.11.2002) by [The Maternity and Parental Leave \(Amendment\) Regulations 2002 \(S.I. 2002/2789\)](#), regs. 1(1), **13(b)**
- F12** [Reg. 19\(3A\)](#) inserted (23.7.2008 with effect in accordance with reg. 2 of the amending S.I.) by [The Maternity and Parental Leave etc. and the Paternity and Adoption Leave \(Amendment\) Regulations 2008 \(S.I. 2008/1966\)](#), regs. 1, **6(c)**

## Unfair dismissal

**20.**—(1) An employee who is dismissed is entitled under section 99 of the 1996 Act to be regarded for the purposes of Part X of that Act as unfairly dismissed if—

- (a) the reason or principal reason for the dismissal is of a kind specified in paragraph (3), or
- (b) the reason or principal reason for the dismissal is that the employee is redundant, and regulation 10 has not been complied with.

(2) An employee who is dismissed shall also be regarded for the purposes of Part X of the 1996 Act as unfairly dismissed if—

- (a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee was redundant;
- (b) it is shown that the circumstances constituting the redundancy applied equally to one or more employees in the same undertaking who held positions similar to that held by the employee and who have not been dismissed by the employer, and
- (c) it is shown that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was a reason of a kind specified in paragraph (3).

(3) The kinds of reason referred to in paragraphs (1) and (2) are reasons connected with—

- (a) the pregnancy of the employee;
  - (b) the fact that the employee has given birth to a child;
  - (c) the application of a relevant requirement, or a relevant recommendation, as defined by section 66(2) of the 1996 Act;
  - (d) the fact that she took, sought to take or availed herself of the benefits of, ordinary maternity leave [<sup>F13</sup>or additional maternity leave];
  - (e) the fact that she took or sought to take—
    - <sup>F14</sup>(i) . . . . .
    - (ii) parental leave, or
    - (iii) time off under section 57A of the 1996 Act;
  - [<sup>F15</sup>(ee) the fact that she failed to return after a period of ordinary or additional maternity leave in a case where—
    - (i) the employer did not notify her, in accordance with regulation 7(6) and (7) or otherwise, of the date on which the period in question would end, and she reasonably believed that that period had not ended, or
    - (ii) the employer gave her less than 28 days' notice of the date on which the period in question would end, and it was not reasonably practicable for her to return on that date;]
  - [<sup>F16</sup>(eee) the fact that she undertook, considered undertaking or refused to undertake work in accordance with regulation 12A;]
  - (f) the fact that she declined to sign a workforce agreement for the purposes of these Regulations, or
  - (g) the fact that the employee, being—
    - (i) a representative of members of the workforce for the purposes of Schedule 1, or
    - (ii) a candidate in an election in which any person elected will, on being elected, become such a representative,performed (or proposed to perform) any functions or activities as such a representative or candidate.
- (4) Paragraphs (1)(b) and (3)(b) only apply where the dismissal ends the employee's ordinary or additional maternity leave period.
- [<sup>F17</sup>(5) Paragraphs (3) and (3A) of regulation 19 apply for the purposes of paragraph (3)(d) as they apply for the purposes of paragraph (2)(d) of that regulation.]
- <sup>F18</sup>(6) . . . . .
- (7) Paragraph (1) does not apply in relation to an employee if—
- (a) it is not reasonably practicable for a reason other than redundancy for the employer (who may be the same employer or a successor of his) to permit her to return to a job which is both suitable for her and appropriate for her to do in the circumstances;
  - (b) an associated employer offers her a job of that kind, and
  - (c) she accepts or unreasonably refuses that offer.
- (8) Where on a complaint of unfair dismissal any question arises as to whether the operation of paragraph (1) is excluded by the provisions of paragraph <sup>F19</sup>... (7), it is for the employer to show that the provisions in question were satisfied in relation to the complainant.

- F13** Words in [reg. 20\(3\)\(d\)](#) inserted (23.7.2008 with effect in accordance with reg. 2 of the amending S.I.) by [The Maternity and Parental Leave etc. and the Paternity and Adoption Leave \(Amendment\) Regulations 2008 \(S.I. 2008/1966\)](#), regs. 1, **7(a)**
- F14** [Reg. 20\(3\)\(e\)\(i\)](#) omitted (23.7.2008 with effect in accordance with reg. 2 of the amending S.I.) by virtue of [The Maternity and Parental Leave etc. and the Paternity and Adoption Leave \(Amendment\) Regulations 2008 \(S.I. 2008/1966\)](#), regs. 1, **7(b)**
- F15** [Reg. 20\(3\)\(ee\)](#) inserted (24.11.2002) by [The Maternity and Parental Leave \(Amendment\) Regulations 2002 \(S.I. 2002/2789\)](#), regs. 1(1), **14**
- F16** [Reg. 20\(3\)\(eee\)](#) inserted (1.10.2006 with effect in accordance with reg. 2 of the amending S.I.) by [The Maternity and Parental Leave etc. and the Paternity and Adoption Leave \(Amendment\) Regulations 2006 \(S.I. 2006/2014\)](#), regs. 1, **11(a)**
- F17** [Reg. 20\(5\)](#) substituted (23.7.2008 with effect in accordance with reg. 2 of the amending S.I.) by [The Maternity and Parental Leave etc. and the Paternity and Adoption Leave \(Amendment\) Regulations 2008 \(S.I. 2008/1966\)](#), regs. 1, **7(c)**
- F18** [Reg. 20\(6\)](#) omitted (1.10.2006 with effect in accordance with reg. 2 of the amending S.I.) by virtue of [The Maternity and Parental Leave etc. and the Paternity and Adoption Leave \(Amendment\) Regulations 2006 \(S.I. 2006/2014\)](#), regs. 1, **11(b)**
- F19** Words in [reg. 20\(8\)](#) omitted (1.10.2006 with effect in accordance with reg. 2 of the amending S.I.) by virtue of [The Maternity and Parental Leave etc. and the Paternity and Adoption Leave \(Amendment\) Regulations 2006 \(S.I. 2006/2014\)](#), regs. 1, **11(c)**

### Contractual rights to maternity or parental leave

**21.**—(1) This regulation applies where an employee is entitled to—

- (a) ordinary maternity leave;
- (b) additional maternity leave, or
- (c) parental leave,

(referred to in paragraph (2) as a “statutory right”) and also to a right which corresponds to that right and which arises under the employee’s contract of employment or otherwise.

(2) In a case where this regulation applies—

- (a) the employee may not exercise the statutory right and the corresponding right separately but may, in taking the leave for which the two rights provide, take advantage of whichever right is, in any particular respect, the more favourable, and
- (b) the provisions of the 1996 Act and of these Regulations relating to the statutory right apply, subject to any modifications necessary to give effect to any more favourable contractual terms, to the exercise of the composite right described in sub-paragraph (a) as they apply to the exercise of the statutory right.

### Calculation of a week’s pay

**22.** Where—

- (a) under Chapter II of part XIV of the 1996 Act, the amount of a week’s pay of an employee falls to be calculated by reference to the average rate of remuneration, or the average amount of remuneration, payable to the employee in respect of a period of twelve weeks ending on a particular date (referred to as “the calculation date”);
- (b) during a week in that period, the employee was absent from work on ordinary or additional maternity leave or parental leave, and

- (c) remuneration is payable to the employee in respect of that week under her contract of employment, but the amount payable is less than the amount that would be payable if she were working,

that week shall be disregarded for the purpose of the calculation and account shall be taken of remuneration in earlier weeks so as to bring up to twelve the number of weeks of which account is taken.

**Changes to legislation:**

There are currently no known outstanding effects for the The Maternity and Parental Leave etc. Regulations 1999, PART IV.