



# Employment Rights Act 1996

## 1996 CHAPTER 18

### [<sup>F1</sup>PART VIII

#### Textual Amendments

- F1** Pt. 8 (ss. 71-80) substituted for Pt. 8 (ss. 71-85) (15.12.1999) by 1999 c. 26, s. 7, **Sch. 4 Pt. 1**; S.I. 1999/2830, art. 2(1)(2), **Sch. 1 Pt. 2** (with transitional provisions in Sch. 3 para. 10)

### <sup>F2</sup>CHAPTER I

#### MATERNITY LEAVE

#### Textual Amendments

- F2** Pt. VIII (ss. 71-80) substituted for Pt. VIII (ss. 71-85) (15.12.1999) by 1999 c. 26, s. 7, **Sch. 4 Pt. I**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 para. 10)

<sup>F3</sup> 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.

[<sup>F4</sup>(3) Regulations under subsection (2)—

- (a) shall secure that, where an employee has a right to leave under this section, she is entitled to an ordinary maternity leave period of at least 26 weeks;
- (b) may allow an employee to choose, subject to prescribed restrictions, the date on which an ordinary maternity leave period starts;

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- [<sup>F5</sup>(ba) may allow an employee to bring forward the date on which an ordinary maternity leave period ends, subject to prescribed restrictions and subject to satisfying prescribed conditions;
- (bb) may allow an employee in prescribed circumstances to revoke, or to be treated as revoking, the bringing forward of that date;]
- (c) may specify circumstances in which an employee may work for her employer during an ordinary maternity leave period without bringing the period to an end.]
- [ Provision under subsection (3)(ba) is to secure that an employee may bring forward the <sup>F6</sup>(3A) date on which an ordinary maternity leave period ends only if the employee or another person has taken, or is taking, prescribed steps as regards leave under section 75E or statutory shared parental pay in respect of the child.]
- (4) Subject to section 74, an employee who exercises her right under subsection (1)—
- (a) is entitled [<sup>F7</sup>, 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 [<sup>F8</sup>, for such purposes and to such extent as may be prescribed] by any obligations arising under those terms and conditions (except in so far as they are inconsistent with subsection (1)), and
- [<sup>F9</sup>(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
- (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.
- [<sup>F10</sup>(7) The Secretary of State may make regulations making provision, in relation to the right to return under subsection (4)(c) above, about—
- (a) seniority, pension rights and similar rights;
- (b) terms and conditions of employment on return.]

#### Textual Amendments

- F3** Pt. VIII (ss. 71-80) substituted for Pt. VIII (ss. 71-85) (15.12.1999) by 1999 c. 26, s. 7, **Sch. 4 Pt. I**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 para. 10)
- F4** S. 71(3) substituted (27.6.2006 for certain purposes, otherwise 1.10.2006) by Work and Families Act 2006 (c. 18), ss. 11, 19, **Sch. 1 para. 31**; S.I. 2006/1682, art. 2(c), 3(c)(d)
- F5** S. 71(3)(ba)(bb) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), ss. 118(2)(a), 139(6); S.I. 2014/1640, art. 3(1)(b)
- F6** S. 71(3A) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), ss. 118(2)(b), 139(6); S.I. 2014/1640, art. 3(1)(b)
- F7** Words in s. 71(4)(a) inserted (24.11.2002) by Employment Act 2002 (c. 22), s. 17(2)(a); S.I. 2002/2866, arts. 2(1), 3, Sch. 1 Pt. 1 (with Sch. 3 para. 3)
- F8** Words in s. 71(4)(b) inserted (24.11.2002) by Employment Act 2002 (c. 22), s. 17(2)(b); S.I. 2002/2866, arts. 2(1), 3, Sch. 1 Pt. 1 (with Sch. 3 para. 3)
- F9** S. 71(4)(c) substituted (24.11.2002) by Employment Act 2002 (c. 22), s. 17(2)(c); S.I. 2002/2866, arts. 2(1), 3, Sch. 1 Pt. 1 (with Sch. 3 para. 3)

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**F10** S. 71(7) substituted (24.11.2002) by [Employment Act 2002 \(c. 22\), s. 17\(3\)](#); [S.I. 2002/2866, arts. 2\(1\), 3, Sch. 1 Pt. 1](#) (with [Sch. 3 para. 3](#))

**Modifications etc. (not altering text)**

**C1** S. 71 restricted (15.12.1999) by [S.I. 1999/3312, reg. 9](#)

**C2** S. 71 modified (E.) (1.9.2003) by [The Education \(Modification of Enactments Relating to Employment\) \(England\) Order 2003 \(S.I. 2003/1964\), art. 3, Sch.](#)

**C3** Ss. 70, 71 modified (W.) (12.5.2006) by [The Education \(Modification of Enactments Relating to Employment\) \(Wales\) Order 2006 \(S.I. 2006/1073\), arts. 1\(1\), 3, {Sch. }](#)

**<sup>F11</sup> 72 Compulsory maternity leave.**

- (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 <sup>M1</sup> 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.

**Textual Amendments**

**F11** Pt. VIII (ss. 71-80) substituted for Pt. VIII (ss. 71-85) (15.12.1999) by [1999 c. 26, s. 7, Sch. 4 Pt. I](#); [S.I. 1999/2830, art. 2\(2\), Sch. 1 Pt. II](#) (with [Sch. 3 para. 10](#))

**Marginal Citations**

**M1** [1974 c. 37.](#)

**<sup>F12</sup> 73 Additional maternity leave.**

- (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.

<sup>F13</sup>(3) Regulations under subsection (2)—

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- (a) may allow an employee [<sup>F14</sup>to bring forward the date on which an additional maternity leave period ends, subject to prescribed restrictions and subject to satisfying prescribed conditions;]
  - [<sup>F15</sup>(aa) may allow an employee in prescribed circumstances to revoke, or to be treated as revoking, the bringing forward of that date;]
  - (b) may specify circumstances in which an employee may work for her employer during an additional maternity leave period without bringing the period to an end.]
- [ Provision under subsection (3)(a) is to secure that an employee may bring forward
- <sup>F16</sup>(3A) the date on which an additional maternity leave period ends only if the employee or another person has taken, or is taking, prescribed steps as regards leave under section 75E or statutory shared parental pay in respect of the child.]
- (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
    - (b) does not include terms and conditions about remuneration.
- [ In subsection (4)(c), the reference to return from leave includes, where appropriate, a
- <sup>F17</sup>(5A) reference to a continuous period of absence attributable partly to additional maternity leave and partly to ordinary maternity leave.]
- (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.

#### Textual Amendments

- F12** Pt. VIII (ss. 71-80) substituted for Pt. VIII (ss. 71-85) (15.12.1999) by 1999 c. 26, s. 7, **Sch. 4 Pt. I**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 para. 10)
- F13** S. 73(3) substituted (27.6.2006 for certain purposes, otherwise 1.10.2006) by **Work and Families Act 2006 (c. 18)**, ss. 11, 19, **Sch. 1 para. 32**; S.I. 2006/1682, art. 2(c), 3(c)(d)
- F14** Words in s. 73(3)(a) substituted (30.6.2014) by **Children and Families Act 2014 (c. 6)**, ss. 118(3)(a), 139(6); S.I. 2014/1640, art. 3(1)(b)
- F15** S. 73(3)(aa) inserted (30.6.2014) by **Children and Families Act 2014 (c. 6)**, ss. 118(3)(b), 139(6); S.I. 2014/1640, art. 3(1)(b)
- F16** S. 73(3A) inserted (30.6.2014) by **Children and Families Act 2014 (c. 6)**, ss. 118(3)(c), 139(6); S.I. 2014/1640, art. 3(1)(b)

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**F17** S. 73(5A) inserted (24.11.2002) by [Employment Act 2002 \(c. 22\), s. 17\(4\)](#); [S.I. 2002/2866, arts. 2\(1\), 3, Sch. 1 Pt. 1](#) (with [Sch. 3 para. 3](#))

**F18 74 Redundancy and dismissal.**

- (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 [<sup>F19</sup>71 or] 73 may make provision—
  - (a) for section [<sup>F20</sup>71(4)(c) or] 73(4)(c) not to apply in specified cases, and
  - (b) about dismissal at the conclusion of an [<sup>F21</sup>ordinary or] additional maternity leave period.

**Textual Amendments**

- F18** Pt. VIII (ss. 71-80) substituted for Pt. VIII (ss. 71-85) (15.12.1999) by [1999 c. 26, s. 7, Sch. 4 Pt. I](#); [S.I. 1999/2830, art. 2\(2\), Sch. 1 Pt. II](#) (with [Sch. 3 para. 10](#))
- F19** Words in s. 74(4) inserted (24.11.2002) by [Employment Act 2002 \(c. 22\), s. 17\(5\)\(a\)](#); [S.I. 2002/2866, arts. 2\(1\), 3, Sch. 1 Pt. 1](#) (with [Sch. 3 para. 3](#))
- F20** Words in s. 74(4)(a) inserted (24.11.2002) by [Employment Act 2002 \(c. 22\), s. 17\(5\)\(b\)](#); [S.I. 2002/2866, arts. 2\(1\), 3, Sch. 1 Pt. 1](#) (with [Sch. 3 para. 3](#))
- F21** Words in s. 74(4)(b) inserted (24.11.2002) by [Employment Act 2002 \(c. 22\), s. 17\(5\)\(c\)](#); [S.I. 2002/2866, arts. 2\(1\), 3, Sch. 1 Pt. 1](#) (with [Sch. 3 para. 3](#))

**F22 75 Sections 71 to 73: supplemental.**

- (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

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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.

#### Textual Amendments

**F22** Pt. VIII (ss. 71-80) substituted for Pt. VIII (ss. 71-85) (15.12.1999) by 1999 c. 26, s. 7, **Sch. 4 Pt. I**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 para. 10)

## [<sup>F23</sup>CHAPTER 1A

### ADOPTION LEAVE

#### Textual Amendments

**F23** Pt. 8 Ch. 1A inserted (8.12.2002) by Employment Act 2002 (c. 22), s. 3; S.I. 2002/2866, art. 2(2), Sch. 1 Pt. 2

## 75A Ordinary adoption leave

(1) An employee who satisfies prescribed conditions may be absent from work at any time during an ordinary adoption leave period.

[ The conditions that may be prescribed under subsection (1) include conditions as to—

- <sup>F24</sup>(1A) (a) being a local authority foster parent;
- (b) being approved as a prospective adopter;
- (c) [<sup>F25</sup>being notified—
- (i) by a local authority in England that a child is to be, or is expected to be, placed with the employee under section 22C of the Children Act 1989;
- (ii) by a local authority in Wales that a child is to be, or is expected to be, placed with the employee under section 81 of the Social Services and Well-being (Wales) Act 2014.]

(2) An ordinary adoption leave period is a period calculated in accordance with regulations made by the Secretary of State.

[ Regulations under subsection (2)[<sup>F27</sup>—]

- <sup>F26</sup>(2A) [ (a) may allow an employee to bring forward the date on which an ordinary adoption leave period ends, subject to prescribed restrictions and subject to satisfying prescribed conditions;
- (b) may allow an employee in prescribed circumstances to revoke, or to be treated as revoking, the bringing forward of that date;]
- [ (c) [<sup>F28</sup> may specify circumstances in which an employee may work for his employer during an ordinary adoption leave period without bringing the period to an end.]



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- [ Provision under subsection (2A)(a) is to secure that an employee may bring forward<sup>F29</sup>(2B) the date on which an ordinary adoption leave period ends only if the employee or another person has taken, or is taking, prescribed steps as regards leave under section 75G or statutory shared parental pay in respect of the child.]
- (3) Subject to section 75C, an employee who exercises his 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 he had not been absent,
  - (b) is bound, for such purposes and to such extent as may be prescribed, 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 a job of a prescribed kind.
- (4) In subsection (3)(a) “ terms and conditions of employment ”—
- (a) includes matters connected with an employee’s employment whether or not they arise under his contract of employment, but
  - (b) does not include terms and conditions about remuneration.
- (5) In subsection (3)(c), the reference to return from leave includes, where appropriate, a reference to a continuous period of absence attributable partly to ordinary adoption leave and partly to maternity leave.
- (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 (3)(c), about—
- (a) seniority, pension rights and similar rights;
  - (b) terms and conditions of employment on return.
- [<sup>F30</sup>(8) The Secretary of State may by regulations provide for this section to have effect, with such modifications as the regulations may prescribe, in relation to—
- (a) cases which involve an employee who has applied, or intends to apply, with another person for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 and a child who is, or will be, the subject of the order,
  - (b) cases which involve an employee who has applied, or intends to apply, for a parental order under section 54A of that Act and a child who is, or will be, the subject of the order.]

#### Textual Amendments

- F24** S. 75A(1A) inserted (30.6.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 121(1)**, 139(6); S.I. 2014/1640, **art. 3(1)(e)**
- F25** S. 75A(1A)(c) substituted (E.W.) (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), **regs. 2(1)**, **145**
- F26** S. 75A(2A) inserted (27.6.2006 for certain purposes, otherwise 1.10.2006) by [Work and Families Act 2006 \(c. 18\)](#), **ss. 11**, **19**, **Sch. 1 para. 33**; S.I. 2006/1682, **art. 2(c)**, **3(c)(d)**
- F27** Words in s. 75A(2A) inserted (30.6.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 118(4)(a)**, 139(6); S.I. 2014/1640, **art. 3(1)(b)**

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- F28** Words in s. 75A(2A)(c) renumbered as s. 75A(2A)(c) (30.6.2014) by [Children and Families Act 2014 \(c. 6\), ss. 118\(4\)\(b\), 139\(6\); S.I. 2014/1640, art. 3\(1\)\(b\)](#)
- F29** S. 75A(2B) inserted (30.6.2014) by [Children and Families Act 2014 \(c. 6\), ss. 118\(4\)\(c\), 139\(6\); S.I. 2014/1640, art. 3\(1\)\(b\)](#)
- F30** S. 75A(8) substituted (3.1.2019) by [The Human Fertilisation and Embryology Act 2008 \(Remedial\) Order 2018 \(S.I. 2018/1413\), art. 1\(1\), Sch. 1 para. 11\(10\)](#)

**Modifications etc. (not altering text)**

- C4** S. 75A applied (25.11.2014) by [The Employment Rights Act 1996 \(Application of Sections 75A, 75B, 75G, 75H, 80A and 80B to Parental Order Cases\) Regulations 2014 \(S.I. 2014/3095\), regs. 1\(1\), 2](#)
- C5** S. 75A amendment to earlier affecting provision S.I. 2014/3095, reg. 2 (3.1.2019) by [The Human Fertilisation and Embryology Act 2008 \(Remedial\) Order 2018 \(S.I. 2018/1413\), art. 1\(1\), Sch. 2 para. 8](#)

**75B Additional adoption leave**

- (1) An employee who satisfies prescribed conditions may be absent from work at any time during an additional adoption leave period.
- (2) An additional adoption leave period is a period calculated in accordance with regulations made by the Secretary of State.
- [<sup>F31</sup>(3) Regulations under subsection (2)—
- (a) may allow an employee [<sup>F32</sup>to bring forward the date on which an additional adoption leave period ends, subject to prescribed restrictions and subject to satisfying prescribed conditions;]
- [<sup>F33</sup>(aa) may allow an employee in prescribed circumstances to revoke, or to be treated as revoking, the bringing forward of that date;]
- (b) may specify circumstances in which an employee may work for his employer during an additional adoption leave period without bringing the period to an end.]
- [<sup>F34</sup>(3A) Provision under subsection (3)(a) is to secure that an employee may bring forward the date on which an additional adoption leave period ends only if the employee or another person has taken, or is taking, prescribed steps as regards leave under section 75G or statutory shared parental pay in respect of the child.]
- (4) Subject to section 75C, an employee who exercises his 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 he 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 his contract of employment, but
- (b) does not include terms and conditions about remuneration.



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- (6) In subsection (4)(c), the reference to return from leave includes, where appropriate, a reference to a continuous period of absence attributable partly to additional adoption leave and partly to—
- (a) maternity leave, or
  - (b) ordinary adoption leave,
- or to both.
- (7) 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.
- (8) 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.
- [<sup>F35</sup>(9) The Secretary of State may by regulations provide for this section to have effect, with such modifications as the regulations may prescribe, in relation to—
- (a) cases which involve an employee who has applied, or intends to apply, with another person for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 and a child who is, or will be, the subject of the order,
  - (b) cases which involve an employee who has applied, or intends to apply, for a parental order under section 54A of that Act and a child who is, or will be, the subject of the order.]

#### Textual Amendments

- F31** S. 75B(3) substituted (27.6.2006 for certain purposes, otherwise 1.10.2006) by [Work and Families Act 2006 \(c. 18\), ss. 11, 19, Sch. 1 para. 34](#); S.I. 2006/1682, [art. 2\(c\)](#), 3(c)(d)
- F32** Words in s. 75B(3)(a) substituted (30.6.2014) by [Children and Families Act 2014 \(c. 6\), ss. 118\(5\)\(a\)](#), 139(6); S.I. 2014/1640, [art. 3\(1\)\(b\)](#)
- F33** S. 75B(3)(aa) inserted (30.6.2014) by [Children and Families Act 2014 \(c. 6\), ss. 118\(5\)\(b\)](#), 139(6); S.I. 2014/1640, [art. 3\(1\)\(b\)](#)
- F34** S. 75B(3A) inserted (30.6.2014) by [Children and Families Act 2014 \(c. 6\), ss. 118\(5\)\(c\)](#), 139(6); S.I. 2014/1640, [art. 3\(1\)\(b\)](#)
- F35** S. 75B(9) substituted (3.1.2019) by [The Human Fertilisation and Embryology Act 2008 \(Remedial Order 2018 \(S.I. 2018/1413\), art. 1\(1\), Sch. 1 para. 11\(11\)\)](#)

#### Modifications etc. (not altering text)

- C6** S. 75B applied (25.11.2014) by [The Employment Rights Act 1996 \(Application of Sections 75A, 75B, 75G, 75H, 80A and 80B to Parental Order Cases\) Regulations 2014 \(S.I. 2014/3095\), regs. 1\(1\), 2](#)
- C7** S. 75B amendment to earlier affecting provision S.I. 2014/3095, reg. 2 (3.1.2019) by [The Human Fertilisation and Embryology Act 2008 \(Remedial Order 2018 \(S.I. 2018/1413\), art. 1\(1\), Sch. 2 para. 8](#)

## 75C Redundancy and dismissal

- (1) Regulations under section 75A or 75B may make provision about—
- (a) redundancy, or
  - (b) dismissal (other than by reason of redundancy),

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during an ordinary or additional adoption leave period.

- (2) Regulations made 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 10).
- (3) Regulations under section 75A or 75B may make provision—
- (a) for section 75A(3)(c) or 75B(4)(c) not to apply in specified cases, and
  - (b) about dismissal at the conclusion of an ordinary or additional adoption leave period.

## 75D Chapter 1A: supplemental

- (1) Regulations under section 75A or 75B 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 requiring employers or employees to keep records;
  - (c) make provision for the consequences of failure to give notices, to produce evidence, to keep records or to comply with other procedural requirements;
  - (d) make provision for the consequences of failure to act in accordance with a notice given by virtue of paragraph (a);
  - (e) make special provision for cases where an employee has a right which corresponds to a right under this Chapter and which arises under his contract of employment or otherwise;
  - (f) make provision modifying the effect of Chapter 2 of Part 14 (calculation of a week's pay) in relation to an employee who is or has been absent from work on ordinary or additional adoption leave;
  - (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 ordinary or additional adoption leave;
  - (h) make different provision for different cases or circumstances.

[ Where section 75A or 75B has effect in relation to such cases as are described in <sup>F36</sup>(1A) section 75A(8) or 75B(9), regulations under section 75A or 75B about evidence to be produced may require statutory declarations as to—

- (a) eligibility to apply for a parental order [<sup>F37</sup>under section 54 or 54A of the Human Fertilisation and Embryology Act 2008];
- (b) intention to apply for such an order.]

- (2) In sections 75A and 75B “prescribed” means prescribed by regulations made by the Secretary of State. ]

### Textual Amendments

**F36** S. 75D(1A) inserted (30.6.2014) by [Children and Families Act 2014 \(c. 6\), ss. 122\(3\), 139\(6\)](#); S.I. 2014/1640, art. 3(1)(f)

**F37** Words in s. 75D(1A)(a) inserted (3.1.2019) by [The Human Fertilisation and Embryology Act 2008 \(Remedial\) Order 2018 \(S.I. 2018/1413\), art. 1\(1\), Sch. 1 para. 11\(12\)](#)

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## <sup>F38</sup> CHAPTER 1B

### SHARED PARENTAL LEAVE

#### Textual Amendments

**F38** Pt. 8 Ch. 1B (ss. 75E-75K) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), ss. 117(1), 139(6); S.I. 2014/1640, art. 3(1)(a)

#### **75E Entitlement to shared parental leave: birth**

- (1) The Secretary of State may make regulations entitling an employee who satisfies specified conditions—
  - (a) as to duration of employment,
  - (b) as to being, or expecting to be, the mother of a child,
  - (c) as to caring or intending to care, with another person (“P”), for the child,
  - (d) as to entitlement to maternity leave,
  - (e) as to the exercise of that entitlement and the extent of any such exercise,
  - (f) as to giving notice of an intention to exercise an entitlement to leave under this subsection, and
  - (g) as to the consent of P to the amount of leave under this subsection that the employee intends to take,to be absent from work on leave under this subsection for the purpose of caring for the child.
- (2) Regulations under subsection (1) may provide that the employee's entitlement is subject to the satisfaction by P of specified conditions—
  - (a) as to employment or self-employment,
  - (b) as to having earnings of a specified amount for a specified period,
  - (c) as to caring or intending to care, with the employee, for the child, and
  - (d) as to relationship with the child or the employee.
- (3) Provision under subsection (1)(f) may require the employee to give notice to the employer about—
  - (a) the amount of leave to which the employee would be entitled if the entitlement were fully exercised (disregarding for these purposes any intention of P to exercise an entitlement to leave under subsection (4) or to statutory shared parental pay);
  - (b) how much of the entitlement to leave the employee intends to exercise;
  - (c) the extent to which P intends to exercise an entitlement to leave under subsection (4) or to statutory shared parental pay.
- (4) The Secretary of State may make regulations entitling an employee who satisfies specified conditions—
  - (a) as to duration of employment,
  - (b) as to relationship with a child or expected child or with the child's mother,
  - (c) as to caring or intending to care, with the child's mother, for the child,
  - (d) as to giving notice of an intention to exercise an entitlement to leave under this subsection, and

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- (e) as to the consent of the child's mother to the amount of leave under this subsection that the employee intends to take,  
to be absent from work on leave under this subsection for the purpose of caring for the child.
- (5) Regulations under subsection (4) may provide that the employee's entitlement is subject to the satisfaction by the child's mother of specified conditions—
  - (a) as to employment or self-employment,
  - (b) as to having earnings of a specified amount for a specified period,
  - (c) as to caring or intending to care, with the employee, for the child,
  - (d) as to entitlement (or lack of entitlement) to maternity leave, statutory maternity pay or maternity allowance, and
  - (e) as to the exercise of any such entitlement and the extent of any such exercise.
- (6) Provision under subsection (4)(d) may require the employee to give notice to the employer about—
  - (a) the amount of leave to which the employee would be entitled if the entitlement were fully exercised (disregarding for these purposes any intention of the child's mother to exercise an entitlement to leave under subsection (1) or to statutory shared parental pay);
  - (b) how much of the entitlement to leave the employee intends to exercise;
  - (c) the extent to which the child's mother intends to exercise an entitlement to leave under subsection (1) or to statutory shared parental pay.

#### **75F Entitlement to leave under section 75E: further provision**

- (1) Regulations under section 75E are to include provision for determining—
  - (a) the amount of leave under section 75E(1) or (4) to which an employee is entitled in respect of a child;
  - (b) when leave under section 75E(1) or (4) may be taken.
- (2) Provision under subsection (1)(a) is to secure that the amount of leave to which an employee is entitled in respect of a child does not exceed—
  - (a) in a case where the child's mother became entitled to maternity leave, the relevant amount of time reduced by—
    - (i) where her maternity leave ends without her ordinary or additional maternity leave period having been curtailed by virtue of section 71(3)(ba) or 73(3)(a), the amount of maternity leave taken by the child's mother, or
    - (ii) except where sub-paragraph (i) applies, the amount of time between the beginning of her maternity leave and the time when her ordinary or additional maternity leave period, as curtailed by virtue of section 71(3)(ba) or 73(3)(a), comes to an end;
  - (b) in a case where the child's mother became entitled to statutory maternity pay or maternity allowance but not maternity leave, the relevant amount of time reduced by an amount determined in accordance with paragraph (a) or, as the case may be, paragraph (b) of section 171ZU(6) of the Social Security Contributions and Benefits Act 1992.
- (3) In subsection (2) “ the relevant amount of time ” means an amount of time specified in or determined in accordance with regulations under section 75E.

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- (4) Provision under subsection (1)(a) is to secure that the amount of leave that an employee is entitled to take in respect of a child takes into account—
  - (a) in a case where another person is entitled to leave under section 75E in respect of the child, the amount of such leave taken by the other person;
  - (b) in a case where another person is entitled to statutory shared parental pay in respect of the child but not leave under section 75E, the number of weeks in respect of which such pay is payable to the other person.
- (5) In reckoning for the purposes of subsection (2) the amount of maternity leave taken, a part of a week is to be treated as a full week.
- (6) In reckoning for the purposes of subsection (4) the amount of leave under section 75E taken during a period of such leave, a part of a week is to be treated as a full week.
- (7) Provision under subsection (1)(b) is to secure that leave under section 75E must be taken before the end of such period as may be specified by the regulations.
- (8) Regulations under section 75E are to provide for the taking of leave under section 75E in a single period or in non-consecutive periods.
- (9) Regulations under section 75E may—
  - (a) provide for an employer, subject to such restrictions as may be specified, to require an employee who proposes to take non-consecutive periods of leave under section 75E to take that amount of leave as a single period of leave;
  - (b) provide for a single period of leave that is so imposed on an employee to start with a day proposed by the employee or, if no day is proposed, with the first day of the first period of leave proposed by the employee.
- (10) Regulations under section 75E may provide for the variation, subject to such restrictions as may be specified, of—
  - (a) the period or periods during which an amount of leave under section 75E may be taken;
  - (b) the amount of leave under section 75E that the employee previously specified in accordance with provision under section 75E(3)(b) or (6)(b) or subsection (13)(b) of this section.
- (11) Provision under subsection (10)(a) may provide for variation to be subject to the consent of an employer in circumstances specified by the regulations.
- (12) Provision under subsection (10)(b) may require an employee to satisfy specified conditions—
  - (a) as to giving notice of an intention to vary the amount of leave under section 75E to be taken by the employee;
  - (b) if the employee proposes to vary the amount of leave under section 75E(1) to be taken by the employee, as to the consent of P to that variation;
  - (c) if the employee proposes to vary the amount of leave under section 75E(4) to be taken by the employee, as to the consent of the child's mother to that variation.
- (13) Provision under subsection (12)(a) may require an employee to give notice to the employer about—
  - (a) the extent to which the employee has exercised an entitlement to leave under section 75E(1) or (4) in respect of the child;

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- (b) how much of the entitlement to leave the employee intends to exercise;
  - (c) the extent to which a person other than the employee has exercised an entitlement to leave under section 75E or to statutory shared parental pay in respect of the child;
  - (d) the extent to which a person other than the employee intends to exercise such an entitlement.
- (14) Regulations under section 75E may—
- (a) specify things which are, or are not, to be taken as done for the purpose of caring for a child;
  - (b) make provision excluding the right to be absent on leave under section 75E in respect of a child where more than one child is born as a result of the same pregnancy;
  - (c) specify a minimum amount of leave under section 75E which may be taken;
  - (d) make provision about how leave under section 75E may be taken;
  - (e) specify circumstances in which an employee may work for the employer during a period of leave under section 75E without bringing the particular period of leave, or the employee's entitlement to leave under section 75E, to an end;
  - (f) specify circumstances in which an employee may be absent on leave under section 75E otherwise than for the purpose of caring for a child without bringing the person's entitlement to leave under section 75E to an end.
- (15) In this section “ week ” means any period of seven days.
- (16) The Secretary of State may by regulations provide that the following do not have effect, or have effect with modifications specified by the regulations, in a case where the mother of a child dies before another person has become entitled to leave under section 75E in respect of the child—
- (a) section 75E(4)(b), (c) and (e);
  - (b) section 75E(5);
  - (c) section 75E(6)(c);
  - (d) subsection (12)(c);
  - (e) subsection (13)(c) and (d).

## **75G Entitlement to shared parental leave: adoption**

- (1) The Secretary of State may make regulations entitling an employee who satisfies specified conditions—
- (a) as to duration of employment,
  - (b) as to being a person with whom a child is, or is expected to be, placed for adoption under the law of any part of the United Kingdom,
  - (c) as to caring or intending to care, with another person (“P”), for the child,
  - (d) as to entitlement to adoption leave,
  - (e) as to the exercise of that entitlement and the extent of any such exercise,
  - (f) as to giving notice of an intention to exercise an entitlement to leave under this subsection, and
  - (g) as to the consent of P to the amount of leave under this subsection that the employee intends to take,



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to be absent from work on leave under this subsection for the purpose of caring for the child.

(2) Regulations under subsection (1) may provide that the employee's entitlement is subject to the satisfaction by P of specified conditions—

- (a) as to employment or self-employment,
- (b) as to having earnings of a specified amount for a specified period,
- (c) as to caring or intending to care, with the employee, for the child, and
- (d) as to relationship with the child or the employee.

(3) Provision under subsection (1)(f) may require the employee to give notice to the employer about—

- (a) the amount of leave to which the employee would be entitled if the entitlement were fully exercised (disregarding for these purposes any intention of P to exercise an entitlement to leave under subsection (4) or to statutory shared parental pay);
- (b) how much of the entitlement to leave the employee intends to exercise;
- (c) the extent to which P intends to exercise an entitlement to leave under subsection (4) or to statutory shared parental pay.

(4) The Secretary of State may make regulations entitling an employee who satisfies specified conditions—

- (a) as to duration of employment,
- (b) as to relationship with a child placed, or expected to be placed, for adoption under the law of any part of the United Kingdom or with a person (“A”) with whom the child is, or is expected to be, so placed,
- (c) as to caring or intending to care, with A, for the child,
- (d) as to giving notice of an intention to exercise an entitlement to leave under this subsection, and
- (e) as to the consent of A to the amount of leave under this subsection that the employee intends to take,

to be absent from work on leave under this subsection for the purpose of caring for the child.

(5) Regulations under subsection (4) may provide that the employee's entitlement is subject to the satisfaction by A of specified conditions—

- (a) as to employment or self-employment,
- (b) as to having earnings of a specified amount for a specified period,
- (c) as to caring or intending to care, with the employee, for the child,
- (d) as to entitlement (or lack of entitlement) to adoption leave or statutory adoption pay, and
- (e) as to the exercise of any such entitlement and the extent of any such exercise.

(6) Provision under subsection (4)(d) may require the employee to give notice to the employer about—

- (a) the amount of leave to which the employee would be entitled if the entitlement were fully exercised (disregarding for these purposes any intention of A to exercise an entitlement to leave under subsection (1) or to statutory shared parental pay);
- (b) how much of the entitlement to leave the employee intends to exercise;

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- (c) the extent to which A intends to exercise an entitlement to leave under subsection (1) or to statutory shared parental pay.
- (7) <sup>F39</sup> Regulations under subsections (1) and (4) are to provide for leave in respect of a child placed, or expected to be placed—
- (a) under section 22C of the Children Act 1989 by a local authority in England, or
  - (b) under section 81 of the Social Services and Well-being (Wales) Act 2014 by a local authority in Wales,
- with a local authority foster parent who has been approved as a prospective adopter.]
- (8) This section and section 75H have effect in relation to regulations made by virtue of subsection (7) as if references to a child being placed for adoption under the law of any part of the United Kingdom were references to being placed under section 22C of the Children Act 1989<sup>F40</sup>, or section 81 of the Social Services and Well-being (Wales) Act 2014] with a local authority foster parent who has been approved as a prospective adopter.

#### Textual Amendments

- F39** S. 75G(7) substituted (E.W.) (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), **146(a)**
- F40** Words in s. 75G(8) inserted (E.W.) (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), **146(b)**

#### Modifications etc. (not altering text)

- C8** S. 75G modified (E.W.) (25.11.2014) by [The Employment Rights Act 1996 \(Application of Sections 75G and 75H to Adoptions from Overseas\) Regulations 2014 \(S.I. 2014/3091\)](#), regs. 1, 2, **Sch.**
- C9** S. 75G applied (with modifications) (25.11.2014) by [The Employment Rights Act 1996 \(Application of Sections 75A, 75B, 75G, 75H, 80A and 80B to Parental Order Cases\) Regulations 2014 \(S.I. 2014/3095\)](#), regs. 1(1), 3, **Sch. 1**
- C10** S. 75G amendment to earlier affecting provision S.I. 2014/3095, reg. 3, Sch. 1 (3.1.2019) by [The Human Fertilisation and Embryology Act 2008 \(Remedial\) Order 2018 \(S.I. 2018/1413\)](#), art. 1(1), **Sch. 2 para. 8**

### 75H Entitlement to leave under section 75G: further provision

- (1) Regulations under section 75G are to include provision for determining—
- (a) the amount of leave under section 75G(1) or (4) to which an employee is entitled in respect of a child;
  - (b) when leave under section 75G(1) or (4) may be taken.
- (2) Provision under subsection (1)(a) is to secure that the amount of leave to which an employee is entitled in respect of a child does not exceed—
- (a) in a case where a person with whom the child is, or is expected to be, placed for adoption became entitled to adoption leave, the relevant amount of time reduced by—
    - (i) where the person's adoption leave ends without the person's ordinary or additional adoption leave period having been curtailed by virtue of section 75A(2A)(a) or 75B(3)(a), the amount of adoption leave taken by that person, or

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- (ii) except where sub-paragraph (i) applies, the amount of time between the beginning of the person's adoption leave and the time when the person's ordinary or additional adoption leave period, as curtailed by virtue of section 75A(2A)(a) or 75B(3)(a), comes to an end;
  - (b) in a case where a person with whom the child is, or is expected to be, placed for adoption became entitled to statutory adoption pay but not adoption leave, the relevant amount of time reduced by an amount determined in accordance with paragraph (a) or, as the case may be, paragraph (b) of section 171ZV(6) of the Social Security Contributions and Benefits Act 1992.
- (3) In subsection (2) “ the relevant amount of time ” means an amount of time specified in or determined in accordance with regulations under section 75G.
- (4) Provision under subsection (1)(a) is to secure that the amount of leave that an employee is entitled to take in respect of a child takes into account—
  - (a) in a case where another person is entitled to leave under section 75G in respect of the child, the amount of such leave taken by the other person;
  - (b) in a case where another person is entitled to statutory shared parental pay in respect of the child but not leave under section 75G, the number of weeks in respect of which such pay is payable to the other person.
- (5) In reckoning for the purposes of subsection (2) the amount of adoption leave taken, a part of a week is to be treated as a full week.
- (6) In reckoning for the purposes of subsection (4) the amount of leave under section 75G taken during a period of such leave, a part of a week is to be treated as a full week.
- (7) Provision under subsection (1)(b) is to secure that leave under section 75G must be taken before the end of such period as may be prescribed by the regulations.
- (8) Regulations under section 75G are to provide for the taking of leave under section 75G in a single period or in non-consecutive periods.
- (9) Regulations under section 75G may—
  - (a) provide for an employer, subject to such restrictions as may be specified, to require an employee who proposes to take non-consecutive periods of leave under section 75G to take that amount of leave as a single period of leave, and
  - (b) provide for a single period of leave that is so imposed on an employee to start with a day proposed by the employee or, if no day is proposed, with the first day of the first period of leave proposed by the employee.
- (10) Regulations under section 75G may provide for the variation, subject to such restrictions as may be specified, of—
  - (a) the period or periods during which an amount of leave under section 75G is to be taken;
  - (b) the amount of leave under section 75G that the employee previously specified in accordance with provision under section 75G(3)(b) or (6)(b) or subsection (13)(b) of this section.
- (11) Provision under subsection (10)(a) may provide for variation to be subject to the consent of an employer in circumstances specified by the regulations.
- (12) Provision under subsection (10)(b) may require an employee to satisfy specified conditions—

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- (a) as to giving notice of an intention to vary the amount of leave under section 75G to be taken by the employee;
  - (b) if the employee proposes to vary the amount of leave under section 75G(1) to be taken by the employee, as to the consent of P to that variation;
  - (c) if the employee proposes to vary the amount of leave under section 75G(4) to be taken by the employee, as to the consent of A to that variation.
- (13) Provision under subsection (12)(a) may require an employee to give notice to the employer about—
- (a) the extent to which the employee has exercised an entitlement to leave under section 75G(1) or (4) in respect of the child;
  - (b) how much of the entitlement to leave the employee intends to exercise;
  - (c) the extent to which a person other than the employee has exercised an entitlement to leave under section 75G or to statutory shared parental pay in respect of the child;
  - (d) the extent to which a person other than the employee intends to exercise such an entitlement.
- (14) Regulations under section 75G may—
- (a) specify things which are, or are not, to be taken as done for the purpose of caring for a child;
  - (b) make provision excluding the right to be absent on leave under section 75G in respect of a child where more than one child is placed for adoption as part of the same arrangement;
  - (c) specify a minimum amount of leave under section 75G which may be taken;
  - (d) make provision about how leave under section 75G may be taken;
  - (e) specify circumstances in which an employee may work for the employer during a period of leave under section 75G without bringing the particular period of leave, or the employee's entitlement to leave under section 75G, to an end;
  - (f) specify circumstances in which an employee may be absent on leave under section 75G otherwise than for the purpose of caring for a child without bringing the person's entitlement to leave under section 75G to an end.
- (15) In this section “ week ” means any period of seven days.
- (16) The Secretary of State may by regulations provide that the following do not have effect, or have effect with modifications specified by the regulations, in a case where a person who is taking adoption leave or is entitled to be paid statutory adoption pay in respect of a child dies before another person has become entitled to leave under section 75G in respect of the child—
- (a) section 75G(4)(b), (c) and (e);
  - (b) section 75G(5);
  - (c) section 75G(6)(c);
  - (d) subsection (12)(c);
  - (e) subsection (13)(c) and (d).
- (17) The Secretary of State may by regulations provide for section 75G and this section to have effect in relation to cases which involve adoption, but not the placement of a child for adoption under the law of any part of the United Kingdom, with such modifications as the regulations may prescribe.

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- (18) The Secretary of State may by regulations provide for section 75G and this section to have effect in relation to cases which involve an employee who has applied, or intends to apply, with another person for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 and a child who is, or will be, the subject of the order, with such modifications as the regulations may prescribe.

**Modifications etc. (not altering text)**

- C11** S. 75H applied (with modifications) (25.11.2014) by [The Employment Rights Act 1996 \(Application of Sections 75A, 75B, 75G, 75H, 80A and 80B to Parental Order Cases\) Regulations 2014 \(S.I. 2014/3095\)](#), regs. 1(1), 3, **Sch. 1**
- C12** S. 75H modified (E.W.) (25.11.2014) by [The Employment Rights Act 1996 \(Application of Sections 75G and 75H to Adoptions from Overseas\) Regulations 2014 \(S.I. 2014/3091\)](#), regs. 1, 2, **Sch.**
- C13** S. 75H amendment to earlier affecting provision S.I. 2014/3095, reg. 3, Sch. 1 (3.1.2019) by [The Human Fertilisation and Embryology Act 2008 \(Remedial\) Order 2018 \(S.I. 2018/1413\)](#), art. 1(1), **Sch. 2 para. 8**

**75I Rights during and after shared parental leave**

- (1) Regulations under section 75E or 75G are to provide—
- that an employee who is absent on leave under that section is entitled, for such purposes and to such extent as the regulations may prescribe, to the benefit of the terms and conditions of employment which would have applied if the employee had not been absent;
  - that an employee who is absent on leave under that section is bound, for such purposes and to such extent as the regulations may prescribe, by obligations arising under those terms and conditions, except in so far as they are inconsistent with section 75E(1) or (4) or 75G(1) or (4), as the case may be; and
  - that an employee who is absent on leave under that section is entitled to return from leave to a job of a kind prescribed by the regulations, subject to section 75J(1).
- (2) In subsection (1)(a) “terms and conditions of employment”—
- includes matters connected with an employee's employment whether or not they arise under the employee's contract of employment, but
  - does not include terms and conditions about remuneration.
- (3) The reference in subsection (1)(c) to absence on leave under section 75E or 75G includes, where appropriate, a reference to a continuous period of absence attributable partly to leave under one of those sections and partly to any one or more of the following—
- leave under the other of those sections,
  - maternity leave,
  - paternity leave,
  - adoption leave,<sup>F41</sup> ...
  - parental leave<sup>F42</sup>, and
  - parental bereavement leave.]

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- (4) Regulations under section 75E or 75G may specify matters which are, or are not, to be treated as remuneration for the purposes of this section.
- (5) Regulations under section 75E or 75G 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.

#### Textual Amendments

- F41** Word in s. 75I(3)(d) omitted (18.1.2020) by virtue of [Parental Bereavement \(Leave and Pay\) Act 2018 \(c. 24\)](#), s. 2(2), [Sch. para. 23\(a\)](#); S.I. 2020/45, reg. 2
- F42** S. 75I(3)(f) and preceding word inserted (18.1.2020) by [Parental Bereavement \(Leave and Pay\) Act 2018 \(c. 24\)](#), s. 2(2), [Sch. para. 23\(b\)](#); S.I. 2020/45, reg. 2

### 75J Redundancy and dismissal

- (1) Regulations under section 75E or 75G may make provision about—
  - (a) redundancy, or
  - (b) dismissal (other than by reason of redundancy),
 during a period of leave under that section.
- (2) Provision made 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 10).

### 75K Chapter 1B: supplemental

- (1) Regulations under section 75E or 75G may—
  - (a) make provision about notices to be given, evidence to be produced and other procedures to be followed by—
    - (i) employees,
    - (ii) employers, and
    - (iii) relevant persons;
  - (b) make provision requiring such persons to keep records;
  - (c) make provision for the consequences of failure to give notices, to produce evidence, to keep records or to comply with other procedural requirements;
  - (d) make provision for the consequences of failure to act in accordance with a notice given by virtue of paragraph (a);
  - (e) make special provision for cases where an employee has a right which corresponds to a right under section 75E or 75G and which arises under the employee's contract of employment or otherwise;
  - (f) make provision modifying the effect of Chapter 2 of Part 14 (calculation of a week's pay) in relation to an employee who is or has been absent from work on leave under section 75E or 75G;
  - (g) make provision applying, modifying or excluding an enactment, in such circumstances as may be specified and subject to any conditions which may



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be specified, in relation to a person entitled to take leave under section 75E or 75G.

- (2) In subsection (1) “relevant person” means—
- (a) a person who, in connection with an employee's claim to be entitled to leave under section 75E or 75G, is required to satisfy conditions specified in provision under section 75E(2) or (5) or 75G(2) or (5), or
  - (b) a person who is an employer or former employer of such a person.
- (3) In subsection (2)(b) “employer”, in relation to a person falling within subsection (2)
- (a) who is an employed earner, includes a person who is a secondary contributor as regards that employed earner.
- (4) The conditions as to employment or self-employment that may be specified in provision under section 75E(2) or (5) or 75G(2) or (5) include conditions as to being in employed or self-employed earner's employment.
- (5) In subsections (3) and (4)—
- “employed earner” and “self-employed earner” have the meaning given by section 2 of the Social Security Contributions and Benefits Act 1992, subject for these purposes to the effect of regulations made under section 2(2)(b) of that Act (persons who are to be treated as employed or self-employed earners);
  - “employment”, in the case of employment as an employed or self-employed earner, has the meaning given by section 122 of that Act;
  - “secondary contributor”, as regards an employed earner, means a person who—
    - (a) is indicated by section 7(1) of that Act, as that subsection has effect subject to section 7(2) of that Act, as being a secondary contributor as regards the earner, or
    - (b) is indicated by regulations under section 7(2) of that Act as being a person to be treated as a secondary contributor as regards the earner.
- (6) Regulations under any of sections 75E to 75H may make different provision for different cases or circumstances.
- (7) Where sections 75G and 75H have effect in relation to such cases as are described in section 75H(18), regulations under section 75G about evidence to be produced may require statutory declarations as to—
- (a) eligibility to apply for a parental order;
  - (b) intention to apply for such an order.]

## <sup>F43</sup>CHAPTER II

### PARENTAL LEAVE

#### Textual Amendments

**F43** Pt. VIII (ss. 71-80) substituted for Pt. VIII (ss. 71-85) (15.12.1999) by 1999 c. 26, s. 7, **Sch. 4 Pt. I**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 para. 10)

*Status: Point in time view as at 18/01/2020.*

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**F44 76 Entitlement to parental leave.**

- (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.

**Textual Amendments**

**F44** Pt. VIII (ss. 71-80) substituted for Pt. VIII (ss. 71-85) (15.12.1999) by 1999 c. 26, s. 7, **Sch. 4 Pt. I**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 para. 10)

**F45 77 Rights during and after parental leave.**

- (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,

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- (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 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.

#### Textual Amendments

**F45** Pt. VIII (ss. 71-80) substituted for Pt. VIII (ss. 71-85) (15.12.1999) by 1999 c. 26, s. 7, **Sch. 4 Pt. I**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 para. 10)

#### <sup>F46</sup> 78 Special cases.

- (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.

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- (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 [<sup>F47</sup> to parental leave and partly to—
- (a) maternity leave, or
  - (b) adoption leave,
- or to both.]
- (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.

#### Textual Amendments

**F46** Pt. VIII (ss. 71-80) substituted for Pt. VIII (ss. 71-85) (15.12.1999) by 1999 c. 26, s. 7, **Sch. 4 Pt. I**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 para. 10)

**F47** Words in s. 78(6) substituted (24.11.2002) by Employment Act 2002 (c. 22), s. 53, **Sch. 7 para. 28**; S.I. 2002/2866, art. 2(1), Sch. 1 Pt. 1

#### <sup>F48</sup> 79 Supplemental.

- (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.

*Status: Point in time view as at 18/01/2020.*

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- (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.

#### Textual Amendments

**F48** Pt. VIII (ss. 71-80) substituted for Pt. VIII (ss. 71-85) (15.12.1999) by 1999 c. 26, s. 7, Sch. 4 Pt. I; S.I. 1999/2830, art. 2(2), Sch. 1 Pt. II (with Sch. 3 para. 10)

#### <sup>F49</sup> 80 Complaint to employment tribunal.

- (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
  - (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.

[ Section 207A(3) (extension because of mediation in certain European cross-border <sup>F50</sup>(2A) disputes) [<sup>F51</sup>and section 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply] for the purposes of subsection (2)(a).]

- (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.]

#### Textual Amendments

**F49** Pt. VIII (ss. 71-80) substituted for Pt. VIII (ss. 71-85) (15.12.1999) by 1999 c. 26, s. 7, Sch. 4 Pt. I; S.I. 1999/2830, art. 2(2), Sch. 1 Pt. II (with Sch. 3 para. 10)

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- F50** S. 80(2A) inserted (20.5.2011 with application as mentioned in regs. 3 and 4 of the amending S.I.) by The Cross-Border Mediation (EU Directive) Regulations 2011 (S.I. 2011/1133), **regs. 2, 44**
- F51** Words in s. 80(2A) substituted (6.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 2 para. 31**; S.I. 2014/253, art. 3(g)

## [<sup>F52</sup>CHAPTER 3

### PATERNITY LEAVE

#### Textual Amendments

- F52** Pt. 8 Ch. 3 inserted (8.12.2002) by Employment Act 2002 (c. 22), **s. 1**; S.I. 2002/2866, **art. 2(2)**, Sch. 1 Pt. 2

#### **80A Entitlement to <sup>F53</sup>... paternity leave: birth**

- (1) The Secretary of State shall make regulations entitling an employee who satisfies specified conditions—
    - (a) as to duration of employment,
    - (b) as to relationship with a newborn, or expected, child, and
    - (c) as to relationship with the child’s mother,
 to be absent from work on leave under this section for the purpose of caring for the child or supporting the mother.
  - (2) The regulations shall include provision for determining—
    - (a) the extent of an employee’s entitlement to leave under this section in respect of a child;
    - (b) when leave under this section may be taken.
  - (3) Provision under subsection (2)(a) shall secure that where an employee is entitled to leave under this section in respect of a child he is entitled to at least two weeks’ leave.
  - (4) Provision under subsection (2)(b) shall secure that leave under this section must be taken before the end of a period of at least 56 days beginning with the date of the child’s birth.
- [ Provision under subsection (2)(b) must secure that, once an employee takes leave
- <sup>F54</sup>(4A) under section 75E in respect of a child, the employee may not take leave under this section in respect of the child.]
- (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 or supporting the child’s mother;
    - (b) make provision excluding the right to be absent on leave under this section in respect of a child where more than one child is born as a result of the same pregnancy;
    - (c) make provision about how leave under this section may be taken.
  - (6) Where more than one child is born as a result of the same pregnancy, the reference in subsection (4) to the date of the child’s birth shall be read as a reference to the date of birth of the first child born as a result of the pregnancy.



*Status: Point in time view as at 18/01/2020.*

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(7) In this section—

“ newborn child ” includes a child stillborn after twenty-four weeks of pregnancy;

“ week ” means any period of seven days.

#### Textual Amendments

**F53** Word in s. 80A heading repealed (5.4.2015) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), [Sch. 7 para. 32](#); S.I. 2014/1640, art. 7(o) (with art. 16)

**F54** S. 80A(4A) inserted (30.6.2014) by [Children and Families Act 2014 \(c. 6\)](#), [ss. 118\(6\)](#), 139(6); S.I. 2014/1640, art. 3(1)(b)

#### Modifications etc. (not altering text)

**C14** S. 80A applied (with modifications) (25.11.2014) by [The Employment Rights Act 1996 \(Application of Sections 75A, 75B, 75G, 75H, 80A and 80B to Parental Order Cases\) Regulations 2014 \(S.I. 2014/3095\)](#), regs. 1(1), 4, [Sch. 2](#)

**C15** S. 80A amendment to earlier affecting provision S.I. 2014/3095, reg. 4, Sch. 2 (3.1.2019) by [The Human Fertilisation and Embryology Act 2008 \(Remedial\) Order 2018 \(S.I. 2018/1413\)](#), art. 1(1), [Sch. 2 para. 8](#)

F55

#### Entitlement to additional paternity leave: birth

80AA

.....

#### Textual Amendments

**F55** S. 80AA repealed (5.4.2015) by [Children and Families Act 2014 \(c. 6\)](#), [ss. 125\(1\)](#), 139(6); S.I. 2014/1640, art. 6(b) (with art. 14)

#### 80B Entitlement to <sup>F56</sup> ... paternity leave: adoption

(1) The Secretary of State shall make regulations entitling an employee who satisfies specified conditions—

- (a) as to duration of employment,
- (b) as to relationship with a child placed, or expected to be placed, for adoption under the law of any part of the United Kingdom, and
- (c) as to relationship with a person with whom the child is, or is expected to be, so placed for adoption,

to be absent from work on leave under this section for the purpose of caring for the child or supporting the person by reference to whom he satisfies the condition under paragraph (c).

(2) The regulations shall include provision for determining—

- (a) the extent of an employee’s entitlement to leave under this section in respect of a child;
- (b) when leave under this section may be taken.

(3) Provision under subsection (2)(a) shall secure that where an employee is entitled to leave under this section in respect of a child he is entitled to at least two weeks’ leave.

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- (4) Provision under subsection (2)(b) shall secure that leave under this section must be taken before the end of a period of at least 56 days beginning with the date of the child's placement for adoption.
- [ Provision under subsection (2)(b) must secure that, once an employee takes leave
- <sup>F57</sup>(4A) under section 75G in respect of a child, the employee may not take leave under this section in respect of the child.]
- (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 or supporting a person with whom a child is placed for adoption;
  - <sup>F58</sup>(aa) [ make provision excluding the right to be absent on leave under this section in the case of an employee who, by virtue of provision under subsection (6A), has already exercised a right to be absent on leave under this section in connection with the same child;]
  - (b) make provision excluding the right to be absent on leave under this section in the case of an employee who exercises a right to be absent from work on adoption leave;
  - <sup>F59</sup>(ba) [ make provision excluding the right to be absent on leave under this section in the case of an employee who has exercised a right to take time off under section 57ZJ;]
  - (c) make provision excluding the right to be absent on leave under this section in respect of a child where more than one child is placed for adoption as part of the same arrangement;
  - (d) make provision about how leave under this section may be taken.
- (6) Where more than one child is placed for adoption as part of the same arrangement, the reference in subsection (4) to the date of the child's placement shall be read as a reference to the date of placement of the first child to be placed as part of the arrangement.
- [ <sup>F61</sup>Regulations under subsection (1) shall include provision for leave in respect of a
- <sup>F60</sup>(6A) child placed, or expected to be placed—
- (a) under section 22C of the Children Act 1989 by a local authority in England, or
  - (b) under section 81 of the Social Services and Well-being (Wales) Act 2014 by a local authority in Wales,
- with a local authority foster parent who has been approved as a prospective adopter.]
- (6B) This section has effect in relation to regulations made by virtue of subsection (6A) as if—
- (a) references to being placed for adoption were references to being placed under section 22C of the Children Act 1989<sup>F62</sup>, or section 81 of the Social Services and Well-being (Wales) Act 2014] with a local authority foster parent who has been approved as a prospective adopter;
  - (b) references to placement for adoption were references to placement under section 22C<sup>F63</sup> of the Children Act 1989, or section 81 of the Social Services and Well-being (Wales) Act 2014] with such a person;
  - (c) paragraph (aa) of subsection (5) were omitted.]
- (7) In this section, “ week ” means any period of seven days.

*Status: Point in time view as at 18/01/2020.*

*Changes to legislation: Employment Rights Act 1996, Part VIII is up to date with all changes known to be in force on or before 10 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(8) The Secretary of State may by regulations provide for this section to have effect in relation to cases which involve adoption, but not the placement of a child for adoption under the law of any part of the United Kingdom, with such modifications as the regulations may prescribe.

[ The Secretary of State may by regulations provide for this section to have effect in  
F64 (9) relation to cases which involve an employee who has applied, or intends to apply, with another person for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 and a child who is, or will be, the subject of the order, with such modifications as the regulations may prescribe.]

#### Textual Amendments

- F56** Word in s. 80B heading repealed (5.4.2015) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), [Sch. 7 para. 33](#); S.I. 2014/1640, art. 7(o) (with art. 16)
- F57** S. 80B(4A) inserted (30.6.2014) by [Children and Families Act 2014 \(c. 6\)](#), [ss. 118\(7\)](#), 139(6); S.I. 2014/1640, art. 3(1)(b)
- F58** S. 80B(5)(aa) inserted (30.6.2014) by [Children and Families Act 2014 \(c. 6\)](#), [ss. 121\(2\)\(a\)](#), 139(6); S.I. 2014/1640, art. 3(1)(e)
- F59** S. 80B(5)(ba) inserted (30.6.2014) by [Children and Families Act 2014 \(c. 6\)](#), [ss. 128\(2\)\(b\)](#), 139(6); S.I. 2014/1640, art. 3(1)(j)
- F60** S. 80B(6A)(6B) inserted (30.6.2014) by [Children and Families Act 2014 \(c. 6\)](#), [ss. 121\(2\)\(b\)](#), 139(6); S.I. 2014/1640, art. 3(1)(e)
- F61** S. 80B(6A) substituted (E.W.) (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), [147\(a\)](#)
- F62** Words in s. 80B(6B)(a) inserted (E.W.) (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), [147\(b\)](#)
- F63** Words in s. 80B(6B)(b) inserted (E.W.) (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), [147\(c\)](#)
- F64** S. 80B(9) inserted (30.6.2014) by [Children and Families Act 2014 \(c. 6\)](#), [ss. 122\(4\)](#), 139(6); S.I. 2014/1640, art. 3(1)(f)

#### Modifications etc. (not altering text)

- C16** S. 80B applied (with modifications) (1.4.2003) by [The Employment Rights Act 1996 \(Application of Section 80B to Adoptions from Overseas\) Regulations 2003 \(S.I. 2003/920\)](#), [reg. 2](#)
- C17** S. 80B applied (with modifications) (25.11.2014) by [The Employment Rights Act 1996 \(Application of Sections 75A, 75B, 75G, 75H, 80A and 80B to Parental Order Cases\) Regulations 2014 \(S.I. 2014/3095\)](#), regs. 1(1), 4, [Sch. 2](#)
- C18** S. 80B amendment to earlier affecting provision S.I. 2014/3095, reg. 4, Sch. 2 (3.1.2019) by [The Human Fertilisation and Embryology Act 2008 \(Remedial\) Order 2018 \(S.I. 2018/1413\)](#), art. 1(1), [Sch. 2 para. 8](#)

F65

### Entitlement to additional paternity leave: adoption

80BB

#### Textual Amendments

- F65** S. 80BB repealed (5.4.2015) by [Children and Families Act 2014 \(c. 6\)](#), [ss. 125\(1\)](#), 139(6); S.I. 2014/1640, art. 6(b) (with art. 14)

*Status: Point in time view as at 18/01/2020.*

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## 80C Rights during and after paternity leave

- (1) Regulations under section 80A <sup>F66</sup> ... shall provide—
- (a) that an employee who is absent on leave under that section is entitled, for such purposes and to such extent as the regulations may prescribe, 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 leave under that section is bound, for such purposes and to such extent as the regulations may prescribe, by obligations arising under those terms and conditions (except in so far as they are inconsistent with subsection (1) of that section), and
  - (c) that an employee who is absent on leave under that section is entitled to return from leave to a job of a kind prescribed by regulations, subject to section 80D(1).
- (2) The reference in subsection (1)(c) to absence on leave under section 80A <sup>F67</sup> ... includes, where appropriate, a reference to a continuous period of absence attributable partly to leave under that section and partly to any one or more of the following—
- <sup>F68</sup>(za) . . . . .
- (a) maternity leave,
  - (b) adoption leave, <sup>F69</sup> ...
- [ shared parental leave,]
- <sup>F70</sup>(ba)
- [ parental bereavement leave,] and
- <sup>F71</sup>(bb)
- (c) parental leave.
- (3) Subsection (1) shall apply to regulations under section 80B <sup>F72</sup>[<sup>F73</sup> ... as it applies to regulations under section 80A <sup>F74</sup> ....]
- (4) In the application of subsection (1)(c) to regulations under section 80B <sup>F75</sup> ..., the reference to absence on leave under that section includes, where appropriate, a reference to a continuous period of absence attributable partly to leave under that section and partly to any one or more of the following—
- <sup>F76</sup>(za) . . . . .
- (a) maternity leave,
  - (b) adoption leave,
- [ shared parental leave,]
- <sup>F77</sup>(ba)
- [ parental bereavement leave,]
- <sup>F78</sup>(bb)
- (c) parental leave, and
  - (d) leave under section 80A <sup>F79</sup> ....
- (5) In subsection (1)(a), “ terms and conditions of employment ”—
- (a) includes matters connected with an employee’s employment whether or not they arise under his contract of employment, but
  - (b) does not include terms and conditions about remuneration.
- (6) Regulations under [<sup>F80</sup>section 80A or 80B] may specify matters which are, or are not, to be treated as remuneration for the purposes of this section.

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- (7) Regulations under [<sup>F81</sup>section 80A or 80B] 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.

#### Textual Amendments

- F66** Words in s. 80C(1) repealed (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 34(2)**; S.I. 2014/1640, art. 7(p) (with art. 16)
- F67** Words in s. 80C(2) repealed (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 34(3)(a)**; S.I. 2014/1640, art. 7(p) (with art. 16)
- F68** S. 80C(2)(za) repealed (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 34(3)(b)**; S.I. 2014/1640, art. 7(p) (with art. 16)
- F69** Word in s. 80C(2)(b) repealed (30.6.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 34(3)(c)**; S.I. 2014/1640, art. 3(2)(h)
- F70** S. 80C(2)(ba) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 34(3)(d)**; S.I. 2014/1640, art. 3(2)(h)
- F71** S. 80C(2)(bb) inserted (18.1.2020) by Parental Bereavement (Leave and Pay) Act 2018 (c. 24), s. 2(2), **Sch. para. 24(2)**; S.I. 2020/45, reg. 2
- F72** Words in s. 80C(3) repealed (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 34(4)(a)**; S.I. 2014/1640, art. 7(p) (with art. 16)
- F73** Words in s. 80C(3) substituted (3.3.2010) by Work and Families Act 2006 (c. 18), **ss. 5(4)**, 19; S.I. 2010/495, **art. 3(a)**
- F74** Words in s. 80C(3) repealed (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 34(4)(b)**; S.I. 2014/1640, art. 7(p) (with art. 16)
- F75** Words in s. 80C(4) repealed (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 34(5)(a)**; S.I. 2014/1640, art. 7(p) (with art. 16)
- F76** S. 80C(4)(za) repealed (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 34(5)(b)**; S.I. 2014/1640, art. 7(p) (with art. 16)
- F77** S. 80C(4)(ba) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 34(5)(c)**; S.I. 2014/1640, art. 3(2)(h)
- F78** S. 80C(4)(bb) inserted (18.1.2020) by Parental Bereavement (Leave and Pay) Act 2018 (c. 24), s. 2(2), **Sch. para. 24(3)**; S.I. 2020/45, reg. 2
- F79** Words in s. 80C(4)(d) repealed (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 34(5)(d)**; S.I. 2014/1640, art. 7(p) (with art. 16)
- F80** Words in s. 80C(6) substituted (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 34(6)**; S.I. 2014/1640, art. 7(p) (with art. 16)
- F81** Words in s. 80C(7) substituted (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 34(7)**; S.I. 2014/1640, art. 7(p) (with art. 16)

#### 80D Special cases

- (1) Regulations under section [<sup>F82</sup>80A [<sup>F83</sup> or 80B ]] may make provision about—
- (a) redundancy, or
  - (b) dismissal (other than by reason of redundancy),
- during a period of leave under that section.
- (2) Provision by virtue of subsection (1) may include—
- (a) provision requiring an employer to offer alternative employment;

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- (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 10).

#### Textual Amendments

- F82** Words in s. 80D(1) substituted (3.3.2010) by [Work and Families Act 2006 \(c. 18\)](#), ss. 11, 19, [Sch. 1 para. 37](#); [S.I. 2010/495](#), [art. 3\(c\)](#)
- F83** Words in s. 80D(1) substituted (5.4.2015) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), [Sch. 7 para. 35](#); [S.I. 2014/1640](#), [art. 7\(q\)](#) (with [art. 16](#))

### 80E Chapter 3: supplemental

[ Regulations under [<sup>F85</sup>section 80A or 80B] may—

- <sup>F84</sup>(1) (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 requiring employers or employees to keep records;
- (c) make provision for the consequences of failure to give notices, to produce evidence, to keep records or to comply with other procedural requirements;
- (d) make provision for the consequences of failure to act in accordance with a notice given by virtue of paragraph (a);
- (e) make special provision for cases where an employee has a right which corresponds to a right under [<sup>F85</sup>section 80A or 80B] and which arises under his contract of employment or otherwise;
- (f) make provision modifying the effect of Chapter 2 of Part 14 (calculation of a week's pay) in relation to an employee who is or has been absent from work on leave under [<sup>F85</sup>section 80A or 80B];
- (g) make provision applying, modifying or excluding an enactment, in such circumstances as may be specified and subject to any conditions which may be specified, in relation to a person entitled to take leave under [<sup>F85</sup>section 80A or 80B];
- (h) make different provision for different cases or circumstances.

<sup>F86</sup>(2) . . . . .]

#### Textual Amendments

- F84** S. 80E renumbered (3.3.2010) as s. 80E(1) by [Work and Families Act 2006 \(c. 18\)](#), ss. 11, 19, [Sch. 1 para. 38\(3\)](#); [S.I. 2010/495](#), [art. 3\(c\)](#)
- F85** Words in s. 80E(1) substituted (5.4.2015) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), [Sch. 7 para. 36\(2\)](#); [S.I. 2014/1640](#), [art. 7\(q\)](#) (with [art. 16](#))
- F86** S. 80E(2) repealed (5.4.2015) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), [Sch. 7 para. 36\(3\)](#); [S.I. 2014/1640](#), [art. 7\(q\)](#) (with [art. 16](#))

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## [<sup>F87</sup> CHAPTER 4

### PARENTAL BEREAVEMENT LEAVE

#### Textual Amendments

**F87** Pt. 8 Ch. 4 inserted (18.1.2020) by [Parental Bereavement \(Leave and Pay\) Act 2018 \(c. 24\), s. 2\(2\), Sch. para. 2; S.I. 2020/45, reg. 2](#)

#### **80EA Parental bereavement leave**

- (1) The Secretary of State must make regulations entitling an employee who is a bereaved parent to be absent from work on leave under this section.
- (2) For the purposes of subsection (1) an employee is a “bereaved parent” if the employee satisfies conditions specified in the regulations as to relationship with a child who has died.
- (3) The conditions specified under subsection (2) may be framed, in whole or in part, by reference to the employee's care of the child before the child's death.
- (4) The regulations must include provision for determining—
  - (a) the extent of an employee's entitlement to leave under this section in respect of a child;
  - (b) when leave under this section may be taken.
- (5) Provision under subsection (4)(a) must secure that where an employee is entitled to leave under this section in respect of a child the employee is entitled to at least two weeks' leave.
- (6) Provision under subsection (4)(b) must secure that leave under this section must be taken before the end of a period of at least 56 days beginning with the date of the child's death.
- (7) The regulations must secure that where a person is eligible under subsection (1) as the result of the death of more than one child, the person is entitled to leave in respect of each child.
- (8) The regulations may make provision about how leave under this section is to be taken.
- (9) In this section—
  - “child” means a person under the age of 18 (see also section 80EE for the application of this Chapter in relation to stillbirths);
  - “week” means any period of seven days.

#### **80EB Rights during and after bereavement leave**

- (1) Regulations under section 80EA must provide—
  - (a) that an employee who is absent on leave under that section is entitled, for such purposes and to such extent as the regulations may prescribe, to the benefit of the terms and conditions of employment which would have applied but for the absence,



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- (b) that an employee who is absent on leave under that section is bound, for such purposes and to such extent as the regulations may prescribe, by obligations arising under those terms and conditions (except in so far as they are inconsistent with subsection (1) of that section), and
  - (c) that an employee who is absent on leave under that section is entitled to return from leave to a job of a kind prescribed by regulations, subject to section 80EC(1).
- (2) The reference in subsection (1)(c) to absence on leave under section 80EA includes, where appropriate, a reference to a continuous period of absence attributable partly to leave under that section and partly to any one or more of the following—
- (a) maternity leave,
  - (b) paternity leave,
  - (c) adoption leave,
  - (d) shared parental leave, and
  - (e) parental leave.
- (3) In subsection (1)(a), “terms and conditions of employment”—
- (a) includes matters connected with an employee's employment whether or not they arise under the contract of employment, but
  - (b) does not include terms and conditions about remuneration.
- (4) Regulations under section 80EA may specify matters which are, or are not, to be treated as remuneration for the purposes of this section.
- (5) Regulations under section 80EA 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.

### **80EC Special cases**

- (1) Regulations under section 80EA may make provision about—
- (a) redundancy, or
  - (b) dismissal (other than by reason of redundancy),
- during a period of leave under that section.
- (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 10).

### **80ED Chapter 4: supplemental**

Regulations under section 80EA 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 requiring employers or employees to keep records;
- (c) make provision for the consequences of failure to give notices, to produce evidence, to keep records or to comply with other procedural requirements;

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- (d) make provision for the consequences of failure to act in accordance with a notice given by virtue of paragraph (a);
- (e) make special provision for cases where an employee has a right which corresponds to a right under section 80EA and which arises under the person's contract of employment or otherwise;
- (f) make provision modifying the effect of Chapter 2 of Part 14 (calculation of a week's pay) in relation to an employee who is or has been absent from work on leave under section 80EA;
- (g) make provision applying, modifying or excluding an enactment, in such circumstances as may be specified and subject to any conditions which may be specified, in relation to a person entitled to take leave under section 80EA;
- (h) make different provision for different cases or circumstances;
- (i) make consequential provision.

#### **80EE Application in relation to stillbirths**

In this Chapter—

- (a) references to a child include a child stillborn after twenty-four weeks of pregnancy, and
- (b) references to the death of a child are to be read, in relation to a stillborn child, as references to the birth of the child.]

**Status:**

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**Changes to legislation:**

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