



# Employment Protection (Consolidation) Act 1978

## 1978 CHAPTER 44

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

### MATERNITY]

#### Textual Amendments

- F1** Pt. III (ss. 33–48) repealed so far as relating to maternity pay by [Social Security Act 1986](#) (c. 50, SIF 113:1), s. 49(3), Sch. 4 Pt. III paras. 15, 16 (with saving in S.I. 1987/406, [reg. 2\(i\)](#))

VALID FROM 10/06/1994

#### [<sup>F2</sup>General right to maternity leave]

#### Textual Amendments

- F2** Pt. III (ss. 33-38A, 39-44) substituted for Pt. III (ss. 33-48) and ss. 45-47 added as provisions of Pt. III (10.6.1994) by [1993 c. 19](#), ss.23, 25, [Schs.2,3](#); S.I. 1994/1365, [art. 2](#), [Sch.](#)

#### <sup>F3</sup>34 Commencement of maternity leave period.

- (1) Subject to subsection (2), an employee's maternity leave period commences with—
- (a) the date which, in accordance with section 36, she notifies to her employer as the date on which she intends her period of absence from work in exercise of her right to maternity leave to commence, or
  - (b) if earlier, the first day on which she is absent from work wholly or partly because of pregnancy or childbirth after the beginning of the sixth week before the expected week of childbirth.

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*Changes to legislation: There are currently no known outstanding effects for the Employment Protection (Consolidation) Act 1978, Part III. (See end of Document for details)*

- (2) Where childbirth occurs before the day with which the employee's maternity leave period would otherwise commence, her maternity leave period shall commence with the day on which childbirth occurs.
- (3) The Secretary of State may by order vary either of the provisions of subsections (1) and (2).
- (4) No order shall be made under subsection (3) unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

#### Textual Amendments

- F3** Pt. III (ss. 33-38A, 39-44) substituted for Pt. III (ss. 33-48) and ss. 45-47 added as provisions of Pt. III (10.6.1994) by 1993 c. 19, ss.23, 25, Schs. 2, 3; S.I. 1994/1365, art. 2, Sch.

#### <sup>F4</sup>35 Duration of maternity leave period.

- (1) Subject to subsections (2) and (3), an employee's maternity leave period shall continue for the period of fourteen weeks from its commencement or until the birth of the child, if later.
- (2) Subject to subsection (3), where any requirement imposed by or under any provision of any enactment or of any instrument made under any enactment, other than a provision for the time being specified in an order made under section 45(3), prohibits her working for any period after the end of the period mentioned in subsection (1) by reason of her having recently given birth, her maternity leave period shall continue until the expiry of that later period.
- (3) Where an employee is dismissed after the commencement of her maternity leave period but before the time when (apart from this subsection) that period would end, the period ends at the time of the dismissal.
- (4) The Secretary of State may by order vary any of the provisions of this section.
- (5) No order shall be made under subsection (4) unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

#### Textual Amendments

- F4** Pt. III (ss. 33-38A, 39-44) substituted for Pt. III (ss. 33-48) and ss. 45-47 added as provisions of Pt. III (10.6.1994) by 1993 c. 19, ss.23, 25, Schs. 2, 3; S.I. 1994/1365, art. 2, Sch.

#### <sup>F5</sup>36 Notice of commencement of leave.

- (1) An employee shall not have the right conferred by section 33 unless—
  - (a) she notifies her employer of the date (within the restriction imposed by subsection (2)) (“the notified leave date”) on which she intends her period of absence from work in exercise of her right to maternity leave to commence—
    - (i) not less than twenty-one days before that date, or
    - (ii) if that is not reasonably practicable, as soon as is reasonably practicable,

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(b) where she is first absent from work wholly or partly because of pregnancy or childbirth before the notified leave date or before she has notified such a date and after the beginning of the sixth week before the expected week of childbirth, she notifies her employer as soon as is reasonably practicable that she is absent for that reason, or

(c) where childbirth occurs before the notified leave date or before she has notified such a date, she notifies her employer that she has given birth as soon as is reasonably practicable after the birth,

and any notice she is required to give under paragraphs (a) to (c) shall, if her employer so requests, be given in writing.

(2) No date may be notified under subsection (1)(a) which occurs before the beginning of the eleventh week before the expected week of childbirth.

(3) Where, in the case of an employee, either paragraph (b) or (c) of subsection (1) has fallen to be satisfied, and has been so satisfied, nothing in paragraph (a) of that subsection shall impose any requirement on the employee.

#### Textual Amendments

**F5** Pt. III (ss. 33-38A, 39-44) substituted for Pt. III (ss. 33-48) and ss. 45-47 added as provisions of Pt. III (10.6.1994) by 1993 c. 19, ss.23, 25, Schs. 2, 3; S.I. 1994/1365, art. 2, Sch.

#### <sup>F6</sup>37 Requirement to inform employer of pregnancy etc.

(1) An employee shall not have the right conferred by section 33 unless she informs her employer in writing at least twenty-one days before her maternity leave period commences or, if that is not reasonably practicable, as soon as is reasonably practicable—

(a) that she is pregnant, and

(b) of the expected week of childbirth or, if the childbirth has occurred, the date on which it occurred.

(2) An employee shall not have the right conferred by section 33 unless, if requested to do so by her employer, she produces for his inspection a certificate from a registered medical practitioner or a registered midwife stating the expected week of childbirth.

#### Textual Amendments

**F6** Pt. III (ss. 33-38A, 39-44) substituted for Pt. III (ss. 33-48) and ss. 45-47 added as provisions of Pt. III (10.6.1994) by 1993 c. 19, ss.23, 25, Schs. 2, 3; S.I. 1994/1365, art. 2, Sch.

#### <sup>F7</sup>37A Requirement to inform employer of return during maternity leave period.

(1) An employee who intends to return to work earlier than the end of her maternity leave period shall give to her employer not less than seven days notice of the date on which she intends to return.

(2) If an employee returns to work as mentioned in subsection (1) without notifying her employer of her intention to do so or without giving him the notice required by that

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subsection her employer shall be entitled to postpone her return to a date such as will secure, subject to subsection (3), that he has seven days notice of her return.

- (3) An employer is not entitled under subsection (2) to postpone an employee's return to work to a date after the end of her maternity leave period.
- (4) If an employee who has been notified under subsection (2) that she is not to return to work before the date specified by her employer does return to work before that date the employer shall be under no contractual obligation to pay her remuneration until the date specified by him as the date on which she may return.

#### Textual Amendments

**F7** Pt. III (ss. 33-38A, 39-44) substituted for Pt. III (ss. 33-48) and ss. 45-47 added as provisions of Pt. III (10.6.1994) by 1993 c. 19, ss.23, 25, Schs. 2, 3; S.I. 1994/1365, art. 2, Sch.

#### <sup>F8</sup>38 Special provision where redundancy during maternity leave period.

- (1) Where during an employee's maternity leave period it is not practicable by reason of redundancy for the employer to continue to employ her under her existing contract of employment, she shall be entitled, where there is a suitable available vacancy, to be offered (before the ending of her employment under that contract) alternative employment with her employer or his successor, or an associated employer, under a new contract of employment which complies with subsection (2) (and takes effect immediately on the ending of her employment under the previous contract).
- (2) The new contract of employment must be such that—
  - (a) the work to be done under the contract is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances; and
  - (b) the provisions of the new contract as to the capacity and place in which she is to be employed and as to the other terms and conditions of her employment are not substantially less favourable to her than if she had continued to be employed under the previous contract.

#### Textual Amendments

**F8** Pt. III (ss. 33-38A, 39-44) substituted for Pt. III (ss. 33-48) and ss. 45-47 added as provisions of Pt. III (10.6.1994) by 1993 c. 19, ss.23, 25, Schs. 2, 3; S.I. 1994/1365, art. 2, Sch

#### <sup>F9</sup>38A Contractual right to maternity leave.

- (1) An employee who has the right to maternity leave under section 33 and a right to maternity leave under a contract of employment or otherwise may not exercise the two rights separately but may, in taking maternity leave, take advantage of whichever right is, in any particular respect, the more favourable.
- (2) The provisions of sections 34 to 38 shall apply, subject to any modifications necessary to give effect to any more favourable contractual terms, to the exercise of the composite right described in subsection (1) as they apply to the exercise of the right under section 33.

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**Textual Amendments**

**F9** Pt. III (ss. 33-38A, 39-44) substituted for Pt. III (ss. 33-48) and ss. 45-47 added as provisions of Pt. III (10.6.1994) by 1993 c. 19, ss. 23, 25, Schs. 2, 3; S.I. 1994/1365, art. 2, Sch.

VALID FROM 10/06/1994

*[<sup>F10</sup>Right to return to work*

**Textual Amendments**

**F10** Pt. III (ss. 33-38A, 39-44 and cross heading) substituted for Pt. III (ss. 33-48) and ss. 45-47 added as provisions of Pt. III (10.6.1994) by 1993 c. 19, ss. 23, 25, Schs.2, 3; S.I. 1994/1365, art. 2, Sch.

VALID FROM 22/08/1996

<sup>F11</sup>39] .....

**Textual Amendments**

**F11** S. 39 repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, Sch. 3 Pt. I (with ss. 191-195, 202)

<sup>F33</sup>39 **Right to return to work.** **E+W+S**

- (1) An employee who—
  - (a) has the right conferred by section 33, and
  - (b) has, at the beginning of the eleventh week before the expected week of childbirth, been continuously employed for a period of not less than two years,
 shall also have the right to return to work at any time during the period beginning at the end of her maternity leave period and ending twenty-nine weeks after the beginning of the week in which childbirth occurs.
- (2) An employee’s right to return to work under this section is the right to return to work with the person who was her employer before the end of her maternity leave period, or (where appropriate) his successor, in the job in which she was then employed—
  - (a) on terms and conditions as to remuneration not less favourable than those which would have been applicable to her had she not been absent from work at any time since the commencement of her maternity leave period,
  - (b) with her seniority, pension rights and similar rights as they would have been if the period or periods of her employment prior to the end of her maternity leave period were continuous with her employment following her return to work (but subject to the requirements of paragraph 5 of Schedule 5 to the <sup>M1</sup>Social Security Act 1989 (credit for the period of absence in certain cases)), and

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(c) otherwise on terms and conditions no less favourable than those which would have been applicable to her had she not been absent from work after the end of her maternity leave period.

(3) The Secretary of State may by order vary the period of two years specified in subsection (1) or that period as so varied.

(4) No order shall be made under subsection (3) unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

#### Textual Amendments

**F33** Pt. III (ss. 33-38A, 39-44) substituted for Pt. III (ss. 33-48) and ss. 45-47 added as provisions of Pt. III (10.6.1994) by 1993 c. 19, ss. 23, 25, Schs.2, 3; S.I. 1994/1365, art. 2, Sch.

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

**C7** S. 39(1) modified (1.4.1996) by S.I. 1996/1023, arts. 3, 4

#### Marginal Citations

**M1** 1989 c. 24.

### <sup>F12</sup>40 Requirement to give notice of return to employer.

(1) An employee shall not have the right to return to work under section 39 unless she includes with the information required by section 37(1) the information that she intends to exercise the right.

(2) Where, not earlier than twenty-one days before the end of her maternity leave period, an employee is requested in accordance with subsection (3) by her employer, or a successor of his, to give him written confirmation that she intends to exercise the right to return to work under section 39, the employee shall not be entitled to that right unless she gives the requested confirmation within fourteen days of receiving the request or, if that is not reasonably practicable, as soon as is reasonably practicable.

(3) A request under subsection (2) shall be—

- (a) made in writing, and
- (b) accompanied by a written statement of the effect of that subsection.

#### Textual Amendments

**F12** Pt. III (ss. 33-38A, 39-44) substituted for Pt. III (ss. 33-48) and ss. 45-47 added as provisions of Pt. III (10.6.1994) by 1993 c. 19, ss. 23, 25, Schs.2, 3; S.I. 1994/1365, art. 2, Sch

### <sup>F13</sup>41 Special provision where redundancies occur before return to work.

(1) Where an employee has the right to return to work under section 39, but it is not practicable by reason of redundancy for the employer to permit her to return in accordance with that right, she shall be entitled, where there is a suitable available vacancy, to be offered alternative employment with her employer (or his successor), or an associated employer, under a new contract of employment complying with subsection (2).

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- (2) The new contract of employment must be such that—
- (a) the work to be done under the contract is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances; and
  - (b) the provisions of the new contract as to the capacity and place in which she is to be employed and as to the other terms and conditions of her employment are not substantially less favourable to her than if she had returned to work pursuant to her right to return.

#### Textual Amendments

**F13** Pt. III (ss. 33-38A, 39-44) substituted for Pt. III (ss. 33-48) and ss. 45-47 added as provisions of Pt. III (10.6.1994) by 1993 c. 19, ss. 23, 25, Schs.2, 3; S.I. 1994/1365, art. 2, Sch.

#### <sup>F14</sup>42 Exercise of right to return to work.

- (1) An employee shall exercise the right to return to work under section 39 by giving written notice to the employer (who may be her employer before the end of her maternity leave period or a successor of his) at least twenty-one days before the day on which she proposes to return of her proposal to return on that day (the “notified day of return”).
- (2) An employer may postpone an employee’s return to work until a date not more than four weeks after the notified day of return if he notifies her before that day that for specified reasons he is postponing her return until that date, and accordingly she will be entitled to return to work with him on that date.
- (3) Subject to subsection (4), an employee may—
  - (a) postpone her return to work until a date not exceeding four weeks from the notified day of return, notwithstanding that that date falls after the end of the period of twenty-nine weeks beginning with the week in which childbirth occurred; and
  - (b) where no day of return has been notified to the employer, extend the time during which she may exercise her right to return in accordance with subsection (1), so that she returns to work not later than four weeks from the end of that period of twenty-nine weeks;
 

if, before the notified day of return (or the end of the period of twenty-nine weeks), she gives the employer a certificate from a registered medical practitioner stating that by reason of disease or bodily or mental disablement she will be incapable of work on the notified day of return (or the end of that period).
- (4) Where an employee has once exercised a right of postponement or extension under subsection (3)(a) or (b), she shall not again be entitled to exercise a right of postponement or extension under that subsection in connection with the same return to work.
- (5) If an employee has notified a day of return but there is an interruption of work (whether due to industrial action or some other reason) which renders it unreasonable to expect the employee to return to work on the notified day of return, she may instead return to work when work resumes after the interruption or as soon as reasonably practicable afterwards.

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(6) If—

- (a) no day of return has been notified,
- (b) there is an interruption of work (whether due to industrial action or some other reason) which renders it unreasonable to expect the employee to return to work before the end of the period of twenty-nine weeks beginning with the week in which childbirth occurred, or which appears likely to have that effect, and
- (c) in consequence, the employee does not notify a day of return,

the employee may exercise her right to return in accordance with subsection (1) so that she returns to work at any time before the end of the period of twenty-eight days from the end of the interruption notwithstanding that she returns to work outside the period of twenty-nine weeks.

(7) Where the employee has either—

- (a) exercised the right under subsection (3)(b) to extend the period during which she may exercise her right to return; or
- (b) refrained from notifying the day of return in the circumstances described in subsection (6),

the other of those subsections shall apply as if for the reference to the end of the period of twenty-nine weeks there were substituted a reference to the end of the further period of four weeks or, as the case may be, of the period of twenty-eight days from the end of the interruption of work.

#### Textual Amendments

**F14** Pt. III (ss. 33-38A, 39-44) substituted for Pt. III (ss. 33-48) and ss. 45-47 added as provisions of Pt. III (10.6.1994) by 1993 c. 19, ss. 23, 25, Schs.2, 3; S.I. 1994/1365, art. 2, Sch.

#### <sup>F15</sup>43 Supplementary.

- (1) Schedule 2 shall have effect for the purpose of supplementing the preceding sections in relation to an employee's right to return to work under section 39.
- (2) Sections 56 and 86 also have effect for that purpose.
- (3) Subject to subsection (4), in sections 56 and 86 and Schedule 2 "notified day of return" has the same meaning as in section 42.
- (4) Where—
  - (a) an employee's return is postponed under subsection (2) or (3)(a) of section 42, or
  - (b) the employee returns to work on a day later than the notified day of return in the circumstances described in subsection (5) of that section,
 then, subject to subsection (4) of that section, references in those subsections and in sections 56 and 86 and Schedule 2 to the notified day of return shall be construed as references to the day to which the return is postponed or that later day.



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**Textual Amendments**

**F15** Pt. III (ss. 33-38A, 39-44) substituted for Pt. III (ss. 33-48) and ss. 45-47 added as provisions of Pt. III (10.6.1994) by 1993 c. 19, ss. 23, 25, Schs.2, 3; S.I. 1994/1365, art. 2, Sch.

**[<sup>F16</sup>44 Contractual rights.**

- (1) An employee who has the right to return to work under section 39 and a right to return to work after absence because of pregnancy or childbirth under a contract of employment or otherwise may not exercise the two rights separately but may, in returning to work, take advantage of whichever right is, in any particular respect, the more favourable.
- (2) The provisions of sections 39, 41 to 43, 56 and 86 and paragraphs 1 to 4 and 6 of Schedule 2 shall apply, subject to any modifications necessary to give effect to any more favourable contractual terms, to the exercise of the composite right described in subsection (1) as they apply to the exercise of the right to return to work under section 39.]

**Textual Amendments**

**F16** Pt. III (ss. 33-38A, 39-44) substituted for Pt. III (ss. 33-48) and ss. 45-47 added as provisions of Pt. III (10.6.1994) by 1993 c. 19, ss. 23, 25, Schs.2, 3; S.I. 1994/1365, art. 2, Sch.

*General provisions*

**33 Rights of employee in connection with pregnancy and confinement.**

- (1) An employee who is absent from work wholly or partly because of pregnancy or confinement shall, subject to the following provisions of this Act,—
  - (a) ..... <sup>F17</sup>
  - (b) be entitled to return to work.
- (2) Schedule 2 shall have effect for the purpose of supplementing the following provisions of this Act in relation to an employee’s right to return to work.
- (3) An employee shall be entitled to the [<sup>F18</sup>right]referred to in subsection (1) whether or not a contract of employment subsists during the period of her absence but, subject to subsection (4), she shall not be so entitled unless—
  - (a) she continues to be employed by her employer (whether or not she is at work) until immediately before the beginning of the eleventh week before the expected week of confinement;
  - (b) she has at the beginning of that eleventh week been continuously employed for a period of not less than two years;. . .
  - (c) ..... <sup>F19</sup>
  - [<sup>F20</sup>(d) ..... <sup>F21</sup>

(iii) of the expected week of confinement or, if the confinement has occurred, the date of confinement.]

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<sup>F22</sup>(3A) Where not earlier than forty-nine days after the beginning of the expected week of confinement (or the date of confinement) notified under subsection (3)(d) an employee is requested in accordance with subsection (3B) by her employer or a successor of his to give him written confirmation that she intends to return to work, she shall not be entitled to the right to return unless she gives that confirmation within fourteen days of receiving the request or, if that is not reasonably practicable, as soon as reasonably practicable.

(3B) A request under subsection (3A) shall be made in writing and shall be accompanied by a written statement of the effect of that subsection.]

(4) An employee who has been dismissed by her employer for a reason falling within section 60(1)(a) or (b) and has not been re-engaged in accordance with that section, shall be entitled to the <sup>F23</sup>right] referred to in subsection (1) of this section notwithstanding that she has thereby ceased to be employed before the beginning of the eleventh week before the expected week of confinement if, but for that dismissal, she would at the beginning of that eleventh week have been continuously employed for a period of not less than two years, but she shall not be entitled to the right. . . <sup>F24</sup>unless she informs her employer (in writing if he so requests), before or as soon as reasonably practicable after the dismissal takes effect, that she intends to return to work with him.

In this subsection “dismiss” and “dismissal” have the same meaning as they have for the purposes of Part V.

(5) An employee shall not be entitled to the <sup>F25</sup>right] referred to in subsection (1) unless, if requested to do so by her employer, she produces for his inspection a certificate from a registered medical practitioner or a <sup>F26</sup>registered midwife] stating the expected week of her confinement.

(6) The Secretary of State may by order vary the periods of two years referred to in subsections (3) and (4), or those periods as varied from time to time under this subsection, but no such order shall be made unless a draft of the order has been laid before Parliament and approved by resolution of each House of Parliament.

### Textual Amendments

**F17** S. 33(1)(a) and the word "and" immediately following it repealed by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), s. 86(2), [Sch. 11](#)

**F18** Word substituted by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), s. 86(1), [Sch. 10 para. 75](#)

**F19** S. 33(3)(c) repealed by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), s. 86(2), [Sch. 11](#)

**F20** S. 33(3)(d) substituted with saving for s. 33(3)(c) by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), [s. 11\(1\)](#) and [S.I. 1980/1170](#), art. 4, [Sch. 3](#)

**F21** Words repealed by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), s. 86(2), [Sch. 11](#)

**F22** S. 33(3A)(3B) inserted with saving by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), [s. 11\(2\)](#) and [S.I. 1980/1170](#), art. 4, [Sch. 3](#)

**F23** Word substituted by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), s. 86(1), [Sch. 10 para. 75](#)

**F24** Words repealed by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), s. 86(2), [Sch. 11](#)

**F25** Words substituted by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), s. 86(1), [Sch. 10 para. 75](#)

**F26** Words substituted by [Nurses, Midwives and Health Visitors Act 1979 \(c. 36, SIF 83:1\)](#), s. 24(2), [Sch. 7 para. 31](#)

### Modifications etc. (not altering text)

**C1** S. 33 modified by [S.I. 1989/901](#), art. 3, [Sch.](#)

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**C2** Word repealed with saving by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), [Sch. 2](#) and [S.I. 1980/1170, art. 4, Sch. 3](#)

**34**— <sup>F27</sup> .....

**44.**

**Textual Amendments**

**F27** [Ss. 34-44](#) repealed by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), [ss. 49, 86\(2\)](#), [Sch. 4 paras. 15, 16](#), [Sch. 11](#)

**45 Right to return to work.**

- (1) The right to return to work of an employee who has been absent from work wholly or partly because of pregnancy or confinement is, subject to the following provisions of this Act, a right to return to work with her original employer, or, where appropriate, his successor, at any time before the end of the period of twenty-nine weeks beginning with the week in which the date of confinement falls, in the job in which she was employed under the original contract of employment and on terms and conditions not less favourable than those which would have been applicable to her if she had not been so absent.
- (2) In subsection (1) terms and conditions not less favourable than those which would have been applicable to her if she had not been so absent means, as regards seniority, pension rights and other similar rights, that the period or periods of employment prior to the employee's absence shall be regarded as continuous with her employment following that absence [<sup>F28</sup>but subject to the requirements of paragraph 5 of Schedule 5 to the Social Security Act 1989 (credit for the period of absence in certain cases)].
- (3) If an employee is entitled to return to work in accordance with subsection (1), but it is not practicable by reason of redundancy for the employer to permit her so to return to work she shall be entitled, where there is a suitable available vacancy, to be offered alternative employment with her employer (or his successor), or an associated employer, under a new contract of employment complying with subsection (4).
- (4) The new contract of employment must be such that—
  - (a) the work to be done under the contract is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances; and
  - (a) the provisions of the new contract as to the capacity and place in which she is to be employed and as to the other terms and conditions of her employment are not substantially less favourable to her than if she had returned to work in accordance with subsection (1).

**Textual Amendments**

**F28** Words added (prosp.) by [Social Security Act 1989 \(c. 24, SIF 113:1\)](#), [ss. 23, 33\(2\)](#), [Sch. 5 Pt. II para. 15](#)

*Status: Point in time view as at 01/04/1992. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Employment Protection (Consolidation) Act 1978, Part III. (See end of Document for details)*

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

C3 S. 45 modified by S.I. 1985/1846, reg. 5(9) and S.I. 1989/901, art. 3, Sch.

**46 Enforcement of rights under s. 45.**

he remedies of an employee for infringement of either of the rights mentioned in section 45 are those conferred by or by virtue of the provisions of sections 47, 56 and 86 and Schedule 2.

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

C4 Ss. 46-48 modified by S.I. 1989/901, art. 3, Sch.

**47 Exercise of right to return to work.**

- (1) An employee shall exercise her right to return to work by [<sup>F29</sup>giving written notice to] the employer (who may be her original employer or a successor of that employer) at least [<sup>F30</sup>twenty-one ]days before the day on which she proposes to return of her proposal to return on that day (in this section referred to as the notified day of return).
- (2) An employer may postpone an employee's return to work until a date not more than four weeks after the notified day of return if he notifies her before that day that for specified reasons he is postponing her return until that date, and accordingly she will be entitled to return to work with him on that date.
- (3) Subject to subsection (4), an employee may—
  - (a) postpone her return to work until a date not exceeding four weeks from the notified day of return, notwithstanding that that date falls after the end of the period of twenty-nine weeks mentioned in section 45(1); and
  - (b) where no day of return has been notified to the employer, extend the time during which she may exercise her right to return in accordance with subsection (1), so that she returns to work not later than four weeks from the expiration of the said period of twenty-nine weeks;

if before the notified day of return or, as the case may be, the expiration of the period of twenty-nine weeks she gives the employer a certificate from a registered medical practitioner stating that by reason of disease or bodily or mental disablement she will be incapable of work on the notified day of return or the expiration of that period, as the case may be.
- (4) Where an employee has once exercised a right of postponement or extension under subsection (3)(a) or (b), she shall not again be entitled to exercise a right of postponement or extension under that subsection in connection with the same return to work.
- (5) If an employee has notified a day of return but there is an interruption of work (whether due to industrial action or some other reason) which renders it unreasonable to expect the employee to return to work on the notified day of return, she may instead return to work when work resumes after the interruption or as soon as reasonably practicable thereafter.
- (6) If no day of return has been notified and there is an interruption of work (whether due to industrial action or some other reason) which renders it unreasonable to expect

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the employee to return to work before the expiration of the period of twenty-nine weeks referred to in section 45(1), or which appears likely to have that effect and in consequence the employee does not notify a day of return, the employee may exercise her right to return in accordance with subsection (1) so that she returns to work at any time before the end of the period of <sup>F31</sup>twenty-eight days ]from the end of the interruption notwithstanding that she returns to work outside the said period of twenty-nine weeks.

- (7) Where the employee has either—
- (a) exercised the right under subsection (3)(b) to extend the period during which she may exercise her right to return; or
  - (b) refrained from notifying the day of return in the circumstances described in subsection (6),

the other of those subsections shall apply as if for the reference to the expiration of the period of twenty-nine weeks there were substituted a reference to the expiration of the further period of four weeks or, as the case may be, of the period of <sup>F32</sup>twenty-eight days from the end of the interruption of work.

- (8) Where—
- (a) an employee's return is postponed under subsection (2) or (3)(a), or
  - (b) the employee returns to work on a day later than the notified day of return in the circumstances described in subsection (5),

then, subject to subsection (4), references in those subsections and in sections 56 and 86 and Schedule 2 to the notified day of return shall be construed as references to the day to which the return is postponed or, as the case may be, that later day.

#### Textual Amendments

**F29** Words substituted with saving by [Employment Act 1980 \(c. 42, SIF 43:5\), s. 11\(3\)](#) and S.I. 1980/1170, art. 4, [Sch. 3](#)

**F30** Words substituted with saving by [Employment Act 1980 \(c. 42, SIF 43:5\), s. 11\(3\)](#) and S.I. 1980/1170, art. 4, [Sch. 3](#)

**F31** Words substituted by [Employment Act 1980 \(c. 42, SIF 43:5\), s. 11\(3\)](#)

**F32** Words substituted by [Employment Act 1980 \(c. 42, SIF 43:5\), s. 11\(3\)](#)

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

**C5** [Ss. 46-48](#) modified by S.I. 1989/901, art. 3, [Sch.](#)

## 48 Contractual right to return to work.

- (1) An employee who has a right both under this Act and under a contract of employment, or otherwise, to return to work, may not exercise the two rights separately but may in returning to work take advantage of whichever right is, in any particular respect, the more favourable.
- (2) The provisions of sections 45, 46, 47, 56 and 86 and paragraphs 1 to 4 and 6 of Schedule 2 shall apply, subject to any modifications necessary to give effect to any more favourable contractual terms, to the exercise of the composite right described in subsection (1) as they apply to the exercise of the right to return conferred solely by this Part.

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**Status:** Point in time view as at 01/04/1992. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the  
Employment Protection (Consolidation) Act 1978, Part III. (See end of Document for details)

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

C6 Ss. 46–48 modified by S.I. 1989/901, art. 3, Sch.

**Status:**

Point in time view as at 01/04/1992. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

There are currently no known outstanding effects for the Employment Protection (Consolidation) Act 1978, Part III.