



Employment Protection (Consolidation) Act 1978

1978 CHAPTER 44

[^{F1}PART III

MATERNITY]

Textual Amendments

- F1** 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.

[^{F2}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.

^{F3}33 General right to maternity leave.

- (1) An employee who is absent from work at any time during her maternity leave period shall, subject to sections 36 and 37, be entitled to the benefit of the terms and conditions of employment which would have been applicable to her if she had not been absent (and had not been pregnant or given birth to a child).
- (2) Subsection (1) does not confer any entitlement to remuneration.

Status: Point in time view as at 06/02/1995.

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)

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.

^{F4}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.
- (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

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.

^{F5}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.

Status: Point in time view as at 06/02/1995.

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)

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.

^{F6}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,
 - (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

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.

^{F7}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.

Status: Point in time view as at 06/02/1995.

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)

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.**

^{F8}**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 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

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.**

^{F9}**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.

Status: Point in time view as at 06/02/1995.

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)

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

^{F10}**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.

Textual Amendments

F10 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.

[^{F11}Right to return to work]

Textual Amendments

F11 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.

^{F12}**39 Right to return to work.**

- (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

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- (but subject to the requirements of paragraph 5 of Schedule 5 to the ^{M1}Social Security Act 1989 (credit for the period of absence in certain cases)), and
- (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

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.

Modifications etc. (not altering text)

C1 S. 39(1) modified (1.4.1996) by S.I. 1996/1023, arts. 3, 4

Marginal Citations

M1 1989 c. 24.

^{F13}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

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

^{F14}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),

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or an associated employer, under a new contract of employment complying with subsection (2).

- (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

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.

^{F15} 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

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work when work resumes after the interruption or as soon as reasonably practicable afterwards.

(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

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.

^{F16}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.

Status: Point in time view as at 06/02/1995.

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)

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.

[^{F17} 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

F17 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.

[^{F18} Suspension from work on maternity grounds]

Textual Amendments

F18 Pt. III (ss. 33-38A, 39-44) substituted for Pt. III (ss. 33-48) and ss. 45-47, together with the heading, 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.

^{F19} 45 Suspension from work on maternity grounds.

- (1) For the purposes of sections 46 and 47 an employee is suspended on maternity grounds where, in consequence of—
 - (a) any requirement imposed by or under any relevant provision of any enactment or of any instrument made under any enactment, or
 - (b) any recommendation in any relevant provision of a code of practice issued or approved under section 16 of the ^{M2}Health and Safety at Work etc. Act 1974,she is suspended from work by her employer on the ground that she is pregnant, has recently given birth or is breastfeeding a child.
- (2) For the purposes of this section, sections 46 and 47 and section 61 an employee shall be regarded as suspended from work only if, and so long as, she continues to be employed by her employer, but is not provided with work or (disregarding alternative work for the purposes of section 46) does not perform the work she normally performed before the suspension.

Status: Point in time view as at 06/02/1995.

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)

- (3) For the purposes of subsection (1) a provision is a “relevant provision” if it is for the time being specified as a relevant provision in an order made by the Secretary of State under this subsection.

Textual Amendments

F19 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.**

Marginal Citations

M2 1974 c. 37.

^{F20} 46 Right to offer of alternative work.

- (1) Where an employer has available suitable alternative work for an employee the employee has a right to be offered to be provided with it before being suspended on maternity grounds.
- (2) For alternative work to be suitable for an employee for the purposes of this section—
- (a) the work must be of a kind which is both suitable in relation to her and appropriate for her to do in the circumstances; and
 - (b) the terms and conditions applicable to her for performing the work, if they differ from the corresponding terms and conditions applicable to her for performing the work she normally performs under her contract of employment, must not be substantially less favourable to her than those corresponding terms and conditions.
- (3) An employee may present a complaint to an industrial tribunal that her employer has failed to offer to provide her with work in contravention of subsection (1).
- (4) An industrial tribunal shall not entertain a complaint under subsection (3) unless it is presented to the tribunal before the end of the period of three months beginning with the first day of the suspension, or 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 within the period of three months.
- (5) Where the tribunal finds the complaint well-founded it may make an award of compensation to be paid by the employer to the employee.
- (6) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to the infringement of the complainant’s right under subsection (1) by the employer’s failure complained of and to any loss sustained by the complainant which is attributable to that failure.

Textual Amendments

F20 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.**

Status: Point in time view as at 06/02/1995.

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)

[^{F21}47 Right to remuneration on suspension.

- (1) An employee who is suspended on maternity grounds shall be entitled to be paid remuneration by her employer while she is so suspended.
- (2) An employee shall not be entitled to remuneration under this section in respect of any period during which her employer has offered to provide her with work which is suitable alternative work for the purposes of section 46 and the employee has unreasonably refused to perform that work.
- (3) The amount of remuneration payable by an employer to an employee under this section shall be a week's pay in respect of each week of the period of suspension; and if in any week remuneration is payable in respect only of part of that week the amount of a week's pay shall be reduced proportionately.
- (4) Subject to subsection (5), a right to remuneration under this section shall not affect any right of an employee in relation to remuneration under her contract of employment (in subsection (5) referred to as "contractual remuneration").
- (5) Any contractual remuneration paid by an employer to an employee in respect of any period shall go towards discharging the employer's liability under this section in respect of that period; and, conversely, any payment of remuneration in discharge of an employer's liability under this section in respect of any period shall go towards discharging any obligation of the employer to pay contractual remuneration in respect of that period.
- (6) An employee may present a complaint to an industrial tribunal that her employer has failed to pay the whole or any part of remuneration to which she is entitled under this section.
- (7) An industrial tribunal shall not entertain a complaint relating to remuneration under this section in respect of any day unless the complaint is presented to the tribunal before the end of the period of three months beginning with that day, or 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 within the period of three months.
- (8) Where an industrial tribunal finds a complaint under subsection (6) well-founded the tribunal shall order the employer to pay the complainant the amount of remuneration which it finds is due to her.]

Textual Amendments

F21 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

Status:

Point in time view as at 06/02/1995.

Changes to legislation:

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