



# 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;

*Status: Point in time view as at 07/10/2013.*

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- (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.]
- (4) Subject to section 74, an employee who exercises her right under subsection (1)—
- (a) is entitled [<sup>F5</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>F6</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>F7</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>F8</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** 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)
- F6** 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)
- F7** 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)
- F8** 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>F9</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.

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- (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

- F9** 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>F10</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>F11</sup>(3) Regulations under subsection (2)—
  - (a) may allow an employee to choose, subject to prescribed restrictions, the date on which an additional maternity leave period ends;
  - (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.]
- (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”—

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- (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>F12</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

- F10** 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)
- F11** 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)
- F12** 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)

#### <sup>F13</sup>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>F14</sup>71 or] 73 may make provision—
  - (a) for section [<sup>F15</sup>71(4)(c) or] 73(4)(c) not to apply in specified cases, and
  - (b) about dismissal at the conclusion of an [<sup>F16</sup>ordinary or] additional maternity leave period.

#### Textual Amendments

- F13** 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)
- F14** 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)
- F15** 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)

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**F16** 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)

**<sup>F17</sup>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 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**

**F17** 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>F18</sup>CHAPTER 1A**

**ADOPTION LEAVE**

**Textual Amendments**

**F18** 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.
- (2) An ordinary adoption leave period is a period calculated in accordance with regulations made by the Secretary of State.

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- [ Regulations under subsection (2) may specify circumstances in which an employee<sup>F19</sup>(2A) may work for his employer during an ordinary adoption leave period without bringing the period to an end.]
- (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.

#### Textual Amendments

- F19** 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\(c\)\(d\)](#)

#### 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>F20</sup>(3) Regulations under subsection (2)—
  - (a) may allow an employee to choose, subject to prescribed restrictions, the date on which an additional adoption leave period ends;
  - (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.]
  - (4) Subject to section 75C, an employee who exercises his right under subsection (1)—

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- (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.
- (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.

#### **Textual Amendments**

**F20** 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)

### **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),
- 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.

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

## <sup>F21</sup>CHAPTER II

### PARENTAL LEAVE

#### Textual Amendments

**F21** 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>F22</sup>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);



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- (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

**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)

#### **F23**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,
  - (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.

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- (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

**F23** 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>F24</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.
- (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>F25</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—

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- (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

- F24** 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)
- F25** 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>F26</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.
- (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

- F26** 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 07/10/2013.*

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## <sup>F27</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>F28</sup>(2A) disputes) applies 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

- F27** 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)
- F28** 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**

## <sup>F29</sup> CHAPTER 3

### PATERNITY LEAVE

### Textual Amendments

- F29** 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>F30</sup>ordinary]paternity leave: birth**

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

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- (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.
  - (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.
  - (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

**F30** Word in s. 80A heading inserted (6.4.2010) by [Work and Families Act 2006 \(c. 18\)](#), ss. 11, 19, [Sch. 1 para. 35](#); S.I. 2010/495, [art. 4\(d\)](#)

#### <sup>I</sup><sub>F31</sub> **80AA Entitlement to additional paternity 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 relationship with a 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, at a time when the child's mother satisfies any conditions prescribed under subsection (2).

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- (2) The conditions that may be prescribed under this subsection are conditions relating to any one or more of the following—
- (a) any employment or self-employment of the child's mother;
  - (b) her entitlement (or lack of entitlement) to leave under this Part or to statutory maternity pay or maternity allowance;
  - (c) whether, and to what extent, she is exercising or has exercised any such entitlement.
- (3) Any regulations under this section 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.
- (4) Provision under subsection (3)(a) shall secure that an employee is not entitled to more than 26 weeks' leave in respect of a child.
- (5) Provision under subsection (3)(b) shall secure that leave under this section—
- (a) may not be taken before the end of a specified period beginning with the date of the child's birth, but
  - (b) must be taken before the end of the period of twelve months beginning with that date.
- (6) Subsections (4) and (5)(a) do not limit the provision that may be made under subsection (3) in relation to cases where the child's mother has died before the end of the period mentioned in subsection (5)(b).
- (7) 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) 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) specify a minimum period which may be taken as leave under this section;
  - (d) make provision about how leave under this section may be taken;
  - (e) specify circumstances in which an employee may work for his employer during a period of leave under this section without bringing the period of leave to an end.
- (8) Where more than one child is born as a result of the same pregnancy, the reference in subsection (5) 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.
- (9) In this section “week” means any period of seven days.]

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**Textual Amendments**

**F31** S. 80AA inserted (3.3.2010.) by [Work and Families Act 2006 \(c. 18\)](#), **ss. 3, 19**; S.I. 2010/495, **art. 3(a)**

*Status: Point in time view as at 07/10/2013.*

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## **80B Entitlement to [<sup>F32</sup>ordinary]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.
- (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.
- (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;
  - (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;
  - (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.
- (7) In this section, “week” means any period of seven days.
- (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.

### **Textual Amendments**

**F32** Word in s. 80B heading inserted (6.4.2010) by [Work and Families Act 2006 \(c. 18\)](#), ss. 11, 19, [Sch. 1 para. 36](#); [S.I. 2010/495](#), [art. 4\(d\)](#)

*Status: Point in time view as at 07/10/2013.*

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

- C4** 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](#)

### **Entitlement to additional paternity leave: adoption**

**80BB**

- (1) 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 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 so placed for adoption (“the adopter”),
- to be absent from work on leave under this section for the purpose of caring for the child, at a time when the adopter satisfies any conditions prescribed under subsection (2).
- (2) The conditions that may be prescribed under this subsection are conditions relating to any one or more of the following—
- (a) any employment or self-employment of the adopter;
  - (b) the adopter's entitlement (or lack of entitlement) to leave under this Part or to statutory adoption pay;
  - (c) whether, and to what extent, the adopter is exercising or has exercised any such entitlement.
- (3) Any regulations under this section 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.
- (4) Provision under subsection (3)(a) shall secure that an employee is not entitled to more than 26 weeks' leave in respect of a child.
- (5) Provision under subsection (3)(b) shall secure that leave under this section—
- (a) may not be taken before the end of a specified period beginning with the date of the child's placement for adoption, but
  - (b) must be taken before the end of the period of twelve months beginning with that date.
- (6) Subsections (4) and (5)(a) do not limit the provision that may be made under subsection (3) in relation to cases where the adopter has died before the end of the period mentioned in subsection (5)(b).
- (7) 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) 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;



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- (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) specify a minimum period which may be taken as leave under this section;
  - (e) make provision about how leave under this section may be taken;
  - (f) specify circumstances in which an employee may work for his employer during a period of leave under this section without bringing the period of leave to an end.
- (8) Where more than one child is placed for adoption as part of the same arrangement, the reference in subsection (5) 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.
- (9) In this section “week” means any period of seven days.
- (10) 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.]

#### Textual Amendments

**F33** S. 80BB inserted (3.3.2010) by [Work and Families Act 2006 \(c. 18\)](#), **ss. 4, 19**; S.I. 2010/495, **art. 3(a)**

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

**C5** S. 80BB modified (6.4.2010) by [The Employment Rights Act 1996 \(Application of Section 80BB to Adoptions from Overseas\) Regulations 2010 \(S.I. 2010/1058\)](#), **reg. 2(1)**, Sch.

### 80C Rights during and after paternity leave

- (1) Regulations under section 80A [<sup>F34</sup>or 80AA] 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>F35</sup>or 80AA] 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—
- [ leave under the other section,]  
<sup>F36</sup>(za)
  - (a) maternity leave,
  - (b) adoption leave, and

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- (c) parental leave.
- (3) Subsection (1) shall apply to regulations under section 80B <sup>F37</sup>...<sup>F37</sup> or 80BB as it applies to regulations under section 80A or 80AA.]
- (4) In the application of subsection (1)(c) to regulations under section 80B [<sup>F38</sup> or 80BB], 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>F39</sup>(za) [ leave under the other section,]
- (a) maternity leave,
- (b) adoption leave,
- (c) parental leave, and
- (d) leave under section 80A [<sup>F40</sup> or 80AA].
- (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>F41</sup> any of sections 80A to 80BB] may specify matters which are, or are not, to be treated as remuneration for the purposes of this section.
- (7) Regulations under [<sup>F41</sup> any of sections 80A to 80BB] 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

- F34** Words in s. 80C(1) inserted (3.3.2010) by [Work and Families Act 2006 \(c. 18\)](#), **ss. 5(2)**, 19; S.I. 2010/495, **art. 3(a)**
- F35** Words in s. 80C(2) inserted (3.3.2010) by [Work and Families Act 2006 \(c. 18\)](#), **ss. 5(3)(a)**, 19; S.I. 2010/495, **art. 3(a)**
- F36** S. 80C(2)(za) inserted (3.3.2010) by [Work and Families Act 2006 \(c. 18\)](#), **ss. 5(3)(b)**, 19; S.I. 2010/495, **art. 3(a)**
- F37** 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)**
- F38** Words in s. 80C(4) inserted (3.3.2010) by [Work and Families Act 2006 \(c. 18\)](#), **ss. 5(5)(a)**, 19; S.I. 2010/495, **art. 3(a)**
- F39** S. 80C(4)(za) inserted (3.3.2010) by [Work and Families Act 2006 \(c. 18\)](#), **ss. 5(5)(b)**, 19; S.I. 2010/495, **art. 3(a)**
- F40** Word in s. 80C(4)(d) inserted (3.3.2010) by [Work and Families Act 2006 \(c. 18\)](#), **ss. 5(5)(c)**, 19; S.I. 2010/495, **art. 3(a)**
- F41** Words in s. 80C(6)(7) substituted (3.3.2010) by [Work and Families Act 2006 \(c. 18\)](#), **ss. 5(6)**, 19; S.I. 2010/495, **art. 3(a)**

#### 80D Special cases

- (1) Regulations under section [<sup>F42</sup> 80A, 80AA, 80B or 80BB] may make provision about—
- (a) redundancy, or

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- (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).

#### Textual Amendments

**F42** 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\(c\)](#)

### 80E Chapter 3: supplemental

- [ Regulations under <sup>F44</sup>any of sections 80A to 80BB] may—
- <sup>F43</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>F44</sup>any of sections 80A to 80BB] 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>F44</sup>any of sections 80A to 80BB];
  - (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>F44</sup>any of sections 80A to 80BB];
  - (h) make different provision for different cases or circumstances.

[ The persons on whom duties may be imposed by regulations under section 80AA or <sup>F45</sup>(2) 80BB include not only employees exercising rights by virtue of that section and their employers but also—

- (a) in the case of section 80AA, the mother of the child in question and any employer or former employer of hers, and
- (b) in the case of section 80BB, the person by reference to whom the condition in subsection (1)(c) of that section is satisfied and any employer or former employer of that person.]]

#### Textual Amendments

**F43** 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\(c\)](#)

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**Status:** Point in time view as at 07/10/2013.

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- F44** Words in s. 80E substituted (3.3.2010) by Work and Families Act 2006 (c. 18), ss. 11, 19, **Sch. 1 para. 38(2)**; S.I. 2010/495, **art. 3(c)**
- F45** S. 80E(2) inserted (3.3.2010) by Work and Families Act 2006 (c. 18), ss. 11, 19, **Sch. 1 para. 38(3)**; S.I. 2010/495, **art. 3(c)**

**Status:**

Point in time view as at 07/10/2013.

**Changes to legislation:**

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