



# Employment Rights Act 1996

## 1996 CHAPTER 18

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

### [<sup>F1</sup> CHAPTER I

### MATERNITY LEAVE

#### 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**)

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- (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>F2</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;
  - [<sup>F3</sup>(ba) may allow an employee to bring forward the date on which an ordinary maternity leave period ends, subject to prescribed restrictions and subject to satisfying prescribed conditions;
  - (bb) may allow an employee in prescribed circumstances to revoke, or to be treated as revoking, the bringing forward of that date;]
  - (c) may specify circumstances in which an employee may work for her employer during an ordinary maternity leave period without bringing the period to an end.]

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- [ Provision under subsection (3)(ba) is to secure that an employee may bring forward the <sup>F4</sup>(3A) date on which an ordinary maternity leave period ends only if the employee or another person has taken, or is taking, prescribed steps as regards leave under section 75E or statutory shared parental pay in respect of the child.]
- (4) Subject to section 74, an employee who exercises her right under subsection (1)—
- (a) is entitled [<sup>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

- F2** 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\(c\)\(d\)](#)
- F3** S. 71(3)(ba)(bb) inserted (30.6.2014) by [Children and Families Act 2014 \(c. 6\)](#), [ss. 118\(2\)\(a\)](#), 139(6); S.I. 2014/1640, [art. 3\(1\)\(b\)](#)
- F4** S. 71(3A) inserted (30.6.2014) by [Children and Families Act 2014 \(c. 6\)](#), [ss. 118\(2\)\(b\)](#), 139(6); S.I. 2014/1640, [art. 3\(1\)\(b\)](#)
- 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.](#) }

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## 72 Compulsory maternity leave.

- (1) An employer shall not permit an employee who satisfies prescribed conditions to work during a compulsory maternity leave period.
- (2) A compulsory maternity leave period is a period calculated in accordance with regulations made by the Secretary of State.
- (3) Regulations under subsection (2) shall secure—
  - (a) that no compulsory leave period is less than two weeks, and
  - (b) that every compulsory maternity leave period falls within an ordinary maternity leave period.
- (4) Subject to subsection (5), any provision of or made under the <sup>M1</sup> Health and Safety at Work etc. Act 1974 shall apply in relation to the prohibition under subsection (1) as if it were imposed by regulations under section 15 of that Act.
- (5) Section 33(1)(c) of the 1974 Act shall not apply in relation to the prohibition under subsection (1); and an employer who contravenes that subsection shall be—
  - (a) guilty of an offence, and
  - (b) liable on summary conviction to a fine not exceeding level 2 on the standard scale.

### Marginal Citations

M1 1974 c. 37.

## 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>F9</sup>(3) Regulations under subsection (2)—
    - (a) may allow an employee <sup>F10</sup>to bring forward the date on which an additional maternity leave period ends, subject to prescribed restrictions and subject to satisfying prescribed conditions;]
    - <sup>F11</sup>(aa) may allow an employee in prescribed circumstances to revoke, or to be treated as revoking, the bringing forward of that date;]
    - (b) may specify circumstances in which an employee may work for her employer during an additional maternity leave period without bringing the period to an end.]
- <sup>F12</sup>(3A) [ Provision under subsection (3)(a) is to secure that an employee may bring forward the date on which an additional maternity leave period ends only if the employee or another person has taken, or is taking, prescribed steps as regards leave under section 75E or statutory shared parental pay in respect of the child.]
- (4) Subject to section 74, an employee who exercises her right under subsection (1)—

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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 she had not been absent,
  - (b) is bound, for such purposes and to such extent as may be prescribed, by obligations arising under those terms and conditions (except in so far as they are inconsistent with subsection (1)), and
  - (c) is entitled to return from leave to a job of a prescribed kind.
- (5) In subsection (4)(a) “terms and conditions of employment”—
- (a) includes matters connected with an employee’s employment whether or not they arise under her contract of employment, but
  - (b) does not include terms and conditions about remuneration.
- [ In subsection (4)(c), the reference to return from leave includes, where appropriate, a <sup>F13</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

- F9** 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\(c\)\(d\)](#)
- F10** Words in s. 73(3)(a) substituted (30.6.2014) by [Children and Families Act 2014 \(c. 6\)](#), [ss. 118\(3\)\(a\), 139\(6\)](#); S.I. 2014/1640, [art. 3\(1\)\(b\)](#)
- F11** S. 73(3)(aa) inserted (30.6.2014) by [Children and Families Act 2014 \(c. 6\)](#), [ss. 118\(3\)\(b\), 139\(6\)](#); S.I. 2014/1640, [art. 3\(1\)\(b\)](#)
- F12** S. 73(3A) inserted (30.6.2014) by [Children and Families Act 2014 \(c. 6\)](#), [ss. 118\(3\)\(c\), 139\(6\)](#); S.I. 2014/1640, [art. 3\(1\)\(b\)](#)
- F13** 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 \(with Sch. 3 para. 3\)](#)

## 74 Redundancy and dismissal.

- (1) Regulations under section 71 or 73 may make provision about redundancy during [<sup>F14</sup>, or after,] 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>F15</sup>71 or] 73 may make provision—

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- (a) for section [F1671(4)(c) or] 73(4)(c) not to apply in specified cases, and
- (b) about dismissal at the conclusion of an [F17ordinary or] additional maternity leave period.

#### Textual Amendments

- F14** Words in s. 74(1) inserted (24.7.2023) by [Protection from Redundancy \(Pregnancy and Family Leave\) Act 2023 \(c. 17\), ss. 2\(2\), 3\(2\)](#)
- F15** 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](#))
- F16** 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](#))
- F17** 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](#))

## 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. ]

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 8 Ch. 5 inserted by [2023 c. 20 Sch. para. 2](#)
- Pt. 8A Ch. 1 heading inserted by [2023 c. 46 s. 1\(3\)](#)
- Pt. 8A Ch. 2 inserted by [2023 c. 46 s. 1\(4\)](#)
- Pt. 8A Ch. 3 inserted by [2023 c. 46 s. 2](#)
- Pt. 8A Ch. 4 inserted by [2023 c. 46 s. 3\(2\)](#)
- s. 43K(1)(ca) and word omitted by [2013 c. 24 s. 20\(5\)](#) (This amendment not applied to legislation.gov.uk. The insertion of s. 43K(1)(ba) by S.I. 2006/1056, Sch. para. 7 is to come into force on the day on which 2005 asp 13, s. 20 comes into force and that provision has never been brought into force)
- s. 43K(2)(ba) omitted by [2013 c. 24 s. 20\(6\)](#) (This amendment not applied to legislation.gov.uk. The insertion of s. 43K(1)(ba) by S.I. 2006/1056, Sch. para. 7 is to come into force on the day on which 2005 asp 13, s. 20 comes into force and that provision has never been brought into force)
- s. 47C(2)(cc) inserted by [2023 c. 20 Sch. para. 22](#)
- s. 47H inserted by [2020 c. 7 Sch. 7 para. 9](#)
- s. 47AA inserted by [2008 c. 25 s. 37](#)
- s. 47EA inserted by [2023 c. 46 Sch. para. 4](#)
- s. 47EB inserted by [2023 c. 46 Sch. para. 5](#)
- s. 48(1C) inserted by [2020 c. 7 Sch. 7 para. 10\(a\)](#)
- s. 48(1C) inserted by [2023 c. 46 Sch. para. 6\(2\)](#)
- s. 48(1D) inserted by [2023 c. 46 Sch. para. 6\(3\)](#)
- s. 49(8) inserted by [2020 c. 7 Sch. 7 para. 11\(b\)](#)
- s. 49(8) inserted by [2023 c. 46 Sch. para. 7\(4\)](#)
- s. 49C inserted by [2017 c. 16 s. 32\(4\)](#)
- s. 75I(3)(g) and word inserted by [2023 c. 20 Sch. para. 23\(b\)](#)
- s. 80C(2)(bc) inserted by [2023 c. 20 Sch. para. 24\(2\)](#)
- s. 80C(4)(bc) inserted by [2023 c. 20 Sch. para. 24\(3\)](#)
- s. 80EB(2)(f) and word inserted by [2023 c. 20 Sch. para. 25\(b\)](#)
- s. 99(3)(cc) inserted by [2023 c. 20 Sch. para. 28](#)
- s. 101B inserted by [2008 c. 25 s. 38](#)
- s. 104H inserted by [2020 c. 7 Sch. 7 para. 14](#)
- s. 104CA inserted by [2023 c. 46 Sch. para. 9](#)
- s. 105(4B) inserted by [2008 c. 25 s. 39\(3\)](#)
- s. 105(7BC) inserted by [2020 c. 7 Sch. 7 para. 15](#)
- s. 105(7BAA) inserted by [2023 c. 46 Sch. para. 10](#)
- s. 108(3)(gia) inserted by [2023 c. 46 Sch. para. 11](#)
- s. 108(3)(de) inserted by [2008 c. 25 s. 39\(4\)](#)
- s. 108(3)(gn) inserted by [2020 c. 7 Sch. 7 para. 16](#)
- s. 110(3A) inserted by [2002 c. 22 s. 44](#)
- s. 205A(2)(ba) inserted by [2023 c. 46 Sch. para. 16\(2\)](#)
- s. 205A(8A) inserted by [2023 c. 46 Sch. para. 16\(3\)](#)
- s. 225(7)(8) inserted by [2023 c. 46 Sch. para. 17](#)
- s. 227(1)(zb)(zc) inserted by [2023 c. 46 Sch. para. 18](#)