

CHILDREN AND FAMILIES ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7 - Statutory Rights to Leave and Pay

Shared parental leave

Section 117: Shared parental leave

Section 75F: Entitlement to leave under section 75E: further provision

484. Section 75F is about the making of regulations to calculate the amount of leave available to the employee, to limit the amount of shared parental leave, to limit when it may be taken, to require the leave to be taken as a single period and to provide for the varying of the amount of shared parental leave that an employee may take and the times at which an employee takes this leave.
485. This section provides that regulations under section 75E will include provisions for determining the amount of shared parental leave and when this leave may be taken. Subsection (7) specifies that provision under subsection (1)(b) is to secure that shared parental leave must be taken before the end of such a period as may be prescribed. Subsection (8) further specifies that provision under subsection (1)(b) is to provide for the taking of shared parental leave in a single period or in non-consecutive periods.
486. This section specifies the maximum amount of leave to which an employee is entitled. The maximum amount in the case of a mother who is entitled to maternity leave is an amount of time specified by regulations (expected to be the total length of maternity leave (52 weeks)) less the amount of maternity leave taken by the mother (where she returns to work without taking specified action to reduce her maternity leave period) or the amount by which the maternity leave period has been reduced. The maximum amount of time in the case of a mother who is entitled to statutory maternity pay or maternity allowance only is an amount of time specified by regulations (expected to be 52 weeks) less the number of weeks of statutory maternity pay or maternity allowance payable to the child's mother, or the number of weeks by which the maternity allowance period or maternity pay period has been reduced.
487. This section specifies that the amount of shared parental leave to which the employee is entitled in respect of a child takes into account the amount of such leave taken by another person in respect of that child or the number of weeks of statutory shared parental pay received by another person in respect of that child (in the case where the other person is entitled to statutory shared parental pay in respect of the child but not to shared parental leave).
488. This section specifies that for the purposes of calculation of the amount of shared parental leave under this section, part of a week is to be treated as a full week.
489. This section provides that the regulations under section 75E may enable an employer, in a case where an employee has proposed to take non-consecutive periods of shared

parental leave, to require the employee to take that amount of leave as a single period of leave. This single period of leave may start with a day proposed by the employee or, if no day is proposed, with the first day of the first period of leave proposed by the employee. This provision is to provide a default position for when the shared parental leave can be taken if agreement cannot be reached between employer and employee.

490. This section provides that regulations made under section 75E may enable an employee, subject to prescribed restrictions, to vary the period or periods of shared parental leave to be taken without varying the amount of leave, and to vary the amount of leave which the employee has notified an intention to exercise. This section provides that variations to the period or periods during which the leave is taken may require this variation to be subject to obtaining the employer's consent in circumstances specified by regulations. This section specifies that in relation to variations to the amount of leave which the employee has notified an intention to exercise, the employee may be required to do this by notice and the consent of the child's mother or P may be required. This section specifies that notifications of variation of the amount of leave which an employee intends to exercise may be required to include notice about the amount of shared parental leave the employee has taken in respect of the child, how much leave the employee intends to take and the amount of shared parental leave or statutory shared parental pay that the other person who may be entitled to such leave or pay in respect of the child, has taken or intends to take.
491. This section provides that regulations made under section 75E may specify: the things which are and are not to be taken as done for the purpose of caring for the child; the minimum amount of shared parental leave that may be taken and provision about how this leave may be taken; the circumstances in which an employee may work for an employer during a period of shared parental leave without bringing the period of leave, or the employee's entitlement to it, to an end; and the circumstances in which the employee may be absent on shared parental leave otherwise than for the purpose of caring for a child without bringing their entitlement to an end. The latter provision might be relevant to situations where an employee has an entitlement to shared parental leave but whose child subsequently dies. They may also make provision to exclude the right to be absent on shared parental leave in respect of a child where more than one child is born as a result of the same pregnancy.
492. This section enables the Secretary of State to provide by regulations that certain subsections do not have effect, or have effect with prescribed modifications, in a case where the mother of a child dies before another person has become entitled to shared parental leave in respect of that child. This might be relevant to situations where a mother dies before entitlement to shared parental leave has arisen for herself or her partner.