

# CHILDREN AND FAMILIES ACT 2014

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 7 - Statutory Rights to Leave and Pay**

##### **Shared parental leave**

##### *Section 117: Shared parental leave*

476. This section inserts a new Chapter 1B into Part 8 of the Employment Rights Act 1996 (ERA). This creates a new entitlement for employees to be absent from work on shared parental leave for the purposes of caring for a child.

##### **Section 75E: Entitlement to shared parental leave: birth**

477. Section 75E deals with entitlement to shared parental leave in relation to birth.
478. Subsections (1) and (4) confer powers on the Secretary of State to make regulations entitling employees to be absent from work for the purpose of caring for a child if they satisfy certain specified conditions.
479. Subsections (1) to (3) are about the conditions for eligibility of the mother of the child. The conditions that may be specified include conditions as to duration of employment, her relationship with the child and as to caring with another person (“P”) for the child. Subsection (1)(f) includes a condition relating to the giving of a notice of intention to take shared parental leave; and subsection (3) specifies what this notice may be about: it may be about the amount of leave available to the mother; the amount of leave the mother intends to take; and whether and to what extent P will take leave or statutory shared parental pay. Subsection (1)(g) specifies a condition relating to the consent of P to the amount of leave that the mother intends to take.
480. Subsection (2) provides that the conditions of entitlement of the mother can include P meeting conditions in respect of P’s employment or self-employment, P’s earnings, P’s relationship to the mother or the child and P’s intention to care, with the mother, for the child. The effect of this provision is that one of the conditions of entitlement to shared parental leave for the mother can relate to the mother’s sharing the care of the child with P and P satisfying conditions as to economic activity and relationship with the child or the mother.
481. Subsection (4) specifies conditions that may be included in regulations to give entitlement to shared parental leave for another employee (the father or the mother’s partner). These include certain conditions as to duration of employment, the employee’s relationship with the child or with the child’s mother and as to the employee caring, with the child’s mother, for the child. Subsection (4)(d) includes a condition relating to the giving of a notice of intention to take shared parental leave. Subsection (4)(e) specifies a condition relating to the child’s mother’s consent to the amount of shared parental leave the employee intends to take.

482. Subsection (5) provides that the conditions of entitlement for the employee can include the mother meeting conditions as to her employment or self-employment, her earnings, her caring with the employee for the child and her entitlement (or otherwise) to statutory maternity pay or maternity allowance and the exercise of these entitlements. The effect of this provision is that one of the conditions of entitlement to shared parental leave for an employee (the father or the mother's partner) can relate to the employee sharing care of the child with the mother and to the mother satisfying conditions as to economic activity.
483. Subsection (6) specifies what the notice the employee is required to give under subsection (4) is about. It may be about the amount of leave available to the employee, the amount of leave the employee intends to take, and whether and to what extent the mother will take leave or shared parental pay.

### **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.

### **Section 75G: Entitlement to shared parental leave: adoption**

493. Section 75G deals with entitlement to shared parental leave in relation to adoption.
494. Subsections (1) and (4) confer powers on the Secretary of State to make regulations entitling employees who are adopters or prospective adopters to be absent from work for the purpose of caring for a child if they satisfy certain conditions.
495. Subsections (1) to (3) are about the conditions of eligibility of the person with whom a child is to be, or is expected to be, placed for adoption (the "primary adopter"). These include certain conditions as to the primary adopter's duration of employment, relationship with the child and as to caring with another person ("P") for the child. Subsection (1)(g) specifies a condition relating to the consent of P to the amount of leave the primary adopter intends to take. Subsection (1)(f) includes a condition relating to the giving of a notice of intention to take shared parental leave under this subsection; and subsection (3) specifies what this notice may be about, such as the maximum amount of leave available to the primary adopter, the amount of leave the primary adopter intends to take and the extent to which P intends to exercise entitlement to the leave or to statutory shared parental pay.
496. Subsection (2) provides that the conditions of entitlement of the primary adopter can include P meeting certain conditions in respect of employment or self-employment, earnings, relationship to the primary adopter or the child and having caring responsibility for the child. The effect of this provision is that one of the conditions of

entitlement to shared parental leave for the primary adopter can relate to the primary adopter sharing the care of the child with P and P satisfying conditions as to economic activity and relation with the child or the primary adopter.

497. Subsections (4) to (6) specify conditions that may be included in regulations to give entitlement to shared parental leave to another employee (other than the primary adopter). These include certain conditions as to duration of employment, the employee's relationship with the child and with the primary adopter and as to the employee caring with the primary adopter for the child. Subsection (4)(d) includes a condition relating to giving notice of intention to take shared parental leave. Subsection (4)(e) specifies a condition relating to the consent of the primary adopter to the amount of leave that the other employee intends to take.
498. Subsection (5) provides that the conditions for entitlement for the employee can include the primary adopter meeting conditions as to employment or self-employment and earnings; the primary adopter caring with the employee for the child; the primary adopter's entitlement (or otherwise) to adoption leave or statutory adoption pay, and the extent of the primary adopter's exercise of such entitlement.
499. Subsection (6) specifies what the notice the employee is required to give under subsection (4) is about. It may be about the maximum possible extent of their entitlement to leave, the amount of leave the employee intends to take, and whether and to what extent the primary adopter will exercise an entitlement to shared parental leave or statutory shared parental pay.

#### **Section 75H: Entitlement to leave under section 75G: further provision**

500. Section 75H is about the making of regulations to calculate the amount of shared parental 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.
501. This section provides that regulations under section 75G will include provisions for determining the amount of shared parental leave to which an employee is entitled in respect of a child, and when this leave may be taken. This section specifies that provision under subsection (1)(b) is to allow shared parental leave to be taken in non-consecutive periods. The effect of this is to allow the leave to be taken more flexibly than in a single consecutive block.
502. This section specifies the maximum amount of leave to which an employee is entitled. The maximum amount in the case of a primary adopter who is entitled to adoption leave is an amount of time specified in regulations (expected to be the total length of adoption leave (52 weeks)) less the amount of adoption leave taken by the primary adopter (where the primary adopter returns to work without taking specified action to reduce the adoption leave period) or the amount by which the adoption leave period has been reduced. The maximum amount of time in the case of a primary adopter who is entitled to statutory adoption pay only is an amount of time specified by regulations (expected to be 52 weeks) less the number of weeks of statutory adoption pay payable to the primary adopter, or the number of weeks by which the adoption pay period has been reduced. Subsection (3) 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 the other person in respect of the child (in a case where the other person is entitled to statutory shared parental pay in respect of the child but not shared parental leave.)
503. This section specifies that provision under subsection (1)(b) is to secure that shared parental leave must be taken before the end of a prescribed period.

*These notes refer to the Children and Families Act 2014  
(c.6) which received Royal Assent on 13 March 2014*

504. This section specifies that for the purposes of calculating the amount of adoption leave or shared parental leave taken, part of a week is to be treated as a full week.
505. This section provides that the regulations under section 75G 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 will 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. The effect of this provision is to provide a default position for when shared parental leave can be taken if agreement cannot be reached between employer and employee.
506. This section provides that regulations made under section 75G may enable an employee, subject to prescribed restrictions, to vary the period(s) 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 include certain information in the notice to their employer and the consent of the primary adopter or P (as appropriate) 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.
507. This section provides that regulations made under section 75G 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 may 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 ensure that an employee cannot take more than one period of shared parental leave in circumstances where more than one child is placed for adoption as part of the same arrangement.
508. This section specifies that in this section "week" means any period of seven days.
509. This section enables regulations to stipulate that certain subsections do not have effect, or have effect with prescribed modifications, in a case where the person who is taking adoption leave or is entitled to be paid statutory adoption pay dies before another person has become entitled to shared parental leave in respect of the relevant child. This is to enable the other person to be able to become entitled to shared parental leave after the death of the primary adopter.
510. This section allows the Secretary of State to provide for sections 75G and 75H to have effect, with appropriate modifications, in relation to cases where a child has been adopted under the laws of a jurisdiction outside the United Kingdom.
511. This section enables the Secretary of State to provide by means of regulations for sections 75G and 75H to have effect (with modifications) in relation to cases involving an employee who has applied, or intends to apply, with another person, under section 54 of the Human Fertilisation and Embryology Act 2008 for a parental order in respect of a child ("intended parent"). This will allow some parents in surrogacy arrangements to be entitled to shared parental leave in the same way as certain adoptive parents.

### **Section 75I: Rights during and after shared parental leave**

512. Section 75I deals with the rights of employees during and after shared parental leave.
513. Subsection (1) provides for regulations under section 75E or 75G to specify the rights and responsibilities of employees whilst on, and after shared parental leave. Subsection (1)(a) states that employees who are absent on shared parental leave will be entitled as far as prescribed, to the benefit of the same terms and conditions of employment which would have applied if the employee had not been absent.
514. Subsection (1)(b) further stipulates that whilst on shared parental leave the employee will continue to be bound, as far as prescribed, by the obligations that would arise from those terms and conditions, to the extent they are compatible with the taking of shared parental leave.
515. Subsection (1)(c) provides for an employee who has been absent on shared parental leave to have the right to return to a kind of job as specified in regulations. Subsection (5) provides for regulations to make provision about seniority, pension and other similar rights, and terms and conditions of employment on return.
516. Subsection (3) stipulates that, where appropriate, the type of absence that gives rise to the right to return referenced in subsection (1)(c) may be a continuous period of absence attributable to a combination of shared parental leave, maternity leave, paternity leave, adoption leave and parental leave.
517. Subsection (2)(b) specifies that “terms and conditions of employment” as referenced in subsection (1)(a) does not include remuneration. Subsection (4) provides that regulations may specify matters which are or are not to be treated as remuneration for the purpose of entitlement to shared parental leave (for birth and adoption).

### **Section 75J: Redundancy and dismissal**

518. Section 75J provides that regulations under section 75E or 75G may make provisions about redundancy or dismissal during a period of shared parental leave.
519. Subsection (2) states that such provisions may include a requirement for an employer to offer alternative employment, and provision for the consequences of failure to comply with the regulations.

### **Section 75K: Chapter 1B: supplemental**

520. Section 75K allows regulations to be made about notices, evidence, procedures to be followed and other supplementary matters.
521. Subsection (1)(a) enables regulations to provide for notices to be given, evidence to be produced and other procedures to be followed by employers, employees and relevant persons. Subsection (2) defines “relevant person”. Subsection (1)(b) enables regulations to require such persons to keep records. Subsection (1)(c) enables regulations to provide for the consequences of failure to give notices, produce evidence, keep records or comply with other procedural requirements. Subsection (1)(d) enables regulations to make provision for the consequences of failure to act in accordance with such a notice. Subsection (1)(e) enables special provision for cases to be made where an employee has a right which corresponds to a right to shared parental leave and which arises under the employee’s contract of employment or otherwise. Subsection (1)(f) and (g) allows for regulations to make provision to modify provision in the ERA relating to the calculation of a week’s pay and to modify, apply or exclude enactments in relation to a person entitled to shared parental leave.
522. Subsections (3) to (5) ensure that the conditions of economic activity which may be specified under sections 75E(2) or (5) and 75G(2) or (5) in relation to the person with whom care of the child is shared can include conditions relating to that person being an

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employed earner or a self-employed earner. They also ensure that the power to make provision about procedures to be followed by an employer of that other person under section 75K includes, as far as concerns an employed earner, the secondary contributor (in relation to secondary Class I National Insurance contributions).

- 523. Subsection (6) allows for regulations under any of sections 75E to 75H to make different provision for different cases or circumstances.
- 524. Subsection (7) provides that the Secretary of State can prescribe that eligible intended parents in surrogacy arrangements who wish to take shared parental leave must make a statutory declaration as to their eligibility and intention to apply for a parental order.

***Section 118: Exclusion or curtailment of other statutory rights to leave***

- 525. This section amends the ERA to allow regulations to be made which will enable a birth mother or primary adopter to bring their ordinary maternity or adoption leave to an end early. This will allow the person and/or their partner to access the new system of shared parental leave and pay.
- 526. This section allows regulations to be made which will set out the circumstances in which the birth mother or adoptive parent can change their mind about a decision to end their ordinary maternity or adoption leave early. It is intended that the birth mother will be able to revoke a decision made before the birth until a certain point (which will be set out in the regulations) after the birth.
- 527. This section provides that these regulations may only allow a birth mother or adoptive parent to bring their ordinary maternity or adoption leave to an end if they and the person with whom they share care of the child take certain steps in relation to the taking of shared parental leave or pay which will include giving notice to their employers where relevant.
- 528. This section also allows regulations to be made which will enable a birth mother or primary adopter to bring their additional maternity or adoption leave to an end early. It mirrors the provisions for ordinary maternity leave which are described above.
- 529. Finally, this section requires regulations to be made which will provide that the taking of shared parental leave prevents an employee from exercising the right to take any remaining paternity leave. This applies in both birth and adoption cases.