

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 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

*These notes refer to the Children and Families Act 2014
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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.