
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, together with provisions inserted into the Employment Rights Act 1996 (“the 1996 Act”) by the Employment Relations Act 1999, confer new rights to maternity and parental leave. The provisions relating to parental leave implement Council Directive [96/34/EC](#) on the framework agreement on parental leave (OJ No.L145, 19.6.96, p.4).

The provisions relating to ordinary maternity leave are derived from the maternity leave provisions in sections 72-78 of the 1996 Act as originally enacted, although the period of leave provided for is 18 weeks (reg.7(1)) rather than 14 weeks as under the Act. The provisions relating to additional maternity leave replace sections 79–85 of the 1996 Act as originally enacted; the new provisions differ principally in that the new right is a right to leave for a period of 29 weeks from the beginning of the week of childbirth (reg.7(4)) rather than a right to return within such a period, and that the new right is available to women who have been continuously employed for a year (reg.5) rather than for two years. The provision made for compulsory maternity leave (in new section 72 of the 1996 Act and reg.8) implements article 8.2 of the Pregnant Workers Directive ([92/85/EEC](#); OJ No. L348,28.11.92, p.1), replacing the Maternity (Compulsory Leave) Regulations 1994 (S.I.1994/2479) which originally implemented that provision.

The right to parental leave is available to employees who have been continuously employed for a year and have, or expect to have, parental responsibility (in Scotland, parental responsibilities) for a child (reg.13). The period of leave is 13 weeks (reg.14), and leave must generally be taken before the child’s fifth birthday (reg.15, which sets out exceptions including provision for leave to be taken before the eighteenth birthday of a child entitled to a disability living allowance). Schedule 2 to the Regulations sets out provisions requiring that the employer must be notified of any proposal to take parental leave and may postpone it for up to six months; it also provides that (except in the case of a child entitled to a disability living allowance) parental leave may not be taken in periods other than a week or a multiple of a week. These provisions apply only to employees who are not subject to a collective or workforce agreement relating to parental leave.

In relation to both additional maternity leave and parental leave, provision is made for certain contractual rights and obligations to continue during the period of absence (reg.17), and for the employee to return to the same or an appropriate alternative job after that period (reg.18). The Regulations also make provision under sections 47C and 99 of the 1996 Act (both inserted by the Employment Relations Act 1999), identifying the cases where the protection against detriment or dismissal for which those sections provide is applicable (regs.19 and 20). The cases are not only cases connected with maternity or parental leave but also cases connected with the right to time off for dependants under new section 57A of the 1996 Act.

A Regulatory Impact Assessment of the costs and benefits that these Regulations would have is available to the public from Employment Relations 5A, Department of Trade and Industry, 1 Victoria Street, London SW1H 0ET.