



# Employment Protection Act 1975

## 1975 CHAPTER 71

### PART II

#### RIGHTS OF EMPLOYEES

##### *Maternity*

#### **34 Dismissal on grounds of pregnancy**

- (1) An employee shall be treated for the purposes of Schedule 1 to the 1974 Act as unfairly dismissed if the reason or principal reason for her dismissal is that she is pregnant or is any other reason connected with her pregnancy, except one of the following reasons—
  - (a) that at the effective date of termination she is or will have become, because of her pregnancy, incapable of adequately doing the work which she is employed to do;
  - (b) that, because of her pregnancy, she cannot or will not be able to continue after that date to do that work without contravention (either by her or her employer) of a duty or restriction imposed by or under any enactment.
- (2) An employee shall be treated for the purposes of Schedule 1 to the 1974 Act as unfairly dismissed if her employer dismisses her for a reason mentioned in subsection (1)(d) or (b) above, but neither he nor any successor of his, where there is a suitable available vacancy, makes her an offer before or on the effective date of termination to engage her under a new contract of employment complying with subsection (3) below.
- (3) The new contract of employment must—
  - (a) take effect immediately on the ending of employment under the previous contract, or, where that employment ends on a Friday, Saturday or Sunday, on or before the next Monday after that Friday, Saturday or Sunday;
  - (b) be such that the work to be done under the contract is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances; and

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- (c) be such that the provisions of the new contract as to the capacity and place in which she is to be employed and as to the other terms and conditions of her employment are not substantially less favourable to her than the corresponding provisions of the previous contract.
- (4) On a complaint of unfair dismissal on the ground of failure to offer to engage an employee as mentioned in subsection (2) above, it shall be for the employer to show that he or a successor made an offer to engage her in compliance with subsections (2) and (3) above or, as the case may be, that there was no suitable available vacancy for her.
- (5) Paragraph 5(3) of Schedule 1 to the 1974 Act (employee treated as dismissed where he gives notice to the employer within the period of the employer's notice) shall not apply in a case where an employer gives notice to an employee to terminate her contract of employment for a reason mentioned in subsection (1)(a) or (b) above.
- (6) In paragraph 12 of Schedule 1 to the 1974 Act (exclusion of certain fixed term contracts) as it applies to an employee treated as unfairly dismissed by virtue of subsection (1) or (2) above, for the reference to 28th February 1972 there shall be substituted a reference to the commencement of this section.
- (7) Paragraph 13(3) of Schedule 1 to the 1974 Act (exclusion of right not to be unfairly dismissed and remedy for breach of that right where a dismissal procedures agreement is in force) shall not apply to the right not to be unfairly dismissed for any reason mentioned in subsection (1) or (2) above.

### **35 Rights of employee in connection with pregnancy and confinement**

- (1) An employee who is absent from work wholly or partly because of pregnancy or confinement shall, subject to the following provisions of this Act, be entitled—
  - (a) in accordance with sections 36 to 38 below, to be paid by her employer a sum to be known as maternity pay ; and
  - (b) in accordance with sections 48 to 50 below and Schedule 3 to this Act, to return to work.
- (2) An employee shall be entitled to the rights referred to in subsection (1) above whether or not a contract of employment subsists during the period of her absence but, subject to subsection (3) below, she shall not be so entitled unless—
  - (a) she continues to be employed by her employer (whether or not she is at work) until immediately before the beginning of the 11th week before the expected week of confinement;
  - (b) she has at the beginning of that 11th week been continuously employed for a period of not less than two years; and
  - (c) she informs her employer (in writing if he so requests) at least three weeks before her absence begins or, if that is not reasonably practicable, as soon as reasonably practicable.—
    - (i) that she will be (or is) absent from work wholly or partly because of pregnancy or confinement, and
    - (ii) in the case of the right to return, that she intends to return to work with her employer.
- (3) An employee who has been dismissed by her employer for a reason falling within section 34(1)(a) or (b) above and has not been re-engaged in accordance with

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that section, shall be entitled to the rights referred to in subsection (1) above notwithstanding that she has thereby ceased to be employed before the beginning of the 11th week before the expected week of confinement if, but for that dismissal, she would at the beginning of that 11th week have been continuously employed for a period of not less than two years, but she shall not be entitled to the right to return unless she informs her employer (in writing if he so requests), before or as soon as reasonably practicable after the dismissal takes effect, that she intends to return to work with him.

- (4) An employee shall not be entitled to either of the rights referred to in subsection (1) above unless, if requested to do so by her employer, she produces for his inspection a certificate from a registered medical practitioner or a certified midwife stating the expected week of her confinement.
- (5) The Secretary of State may by order vary the periods of two years referred to in subsections (2) and (3) above, or those periods as varied from time to time under this section, but no such order shall be made unless a draft of the order has been laid before Parliament and approved by resolution of each House of Parliament.

### **36 Maternity pay**

- (1) Maternity pay shall be paid in respect of a period not exceeding, or periods not exceeding in the aggregate, six weeks during which the employee is absent from work wholly or partly because of pregnancy or confinement (hereafter in this section and sections 37 and 38 below referred to as the payment period or payment periods).
- (2) An employee shall not be entitled to maternity pay for any absence before the beginning of the 11th week before the expected week of confinement, and her payment period or payment periods shall be the first six weeks of absence starting on or falling after the beginning of that 11th week.
- (3) The Secretary of State may by order vary the periods of six weeks referred to in subsections (1) and (2) above, or those periods as varied from time to time under this section, but no such order shall be made unless a draft of the order has been laid before Parliament and approved by resolution of each House of Parliament.
- (4) Where an employee gives her employer the information required by section 35(2)(c) above or produces any certificate requested under section 35(4) above after the beginning of the payment period or the first of the payment periods, she shall not be entitled to maternity pay for any part of that period until she gives him that information or certificate, but on giving him the information or as the case may be producing the certificate, she shall be entitled to be paid in respect of that part of the period or periods which fell before the giving of the information or the production of the certificate.

### **37 Calculation of maternity pay**

- (1) The amount of maternity pay to which an employee is entitled as respects any week shall be 9/10ths of a week's pay reduced by the amount of maternity allowance payable for that week under Part I of Schedule 4 to the Social Security Act 1975, whether or not the employee in question is entitled to the whole or any part of that allowance.
- (2) Maternity pay shall accrue due to an employee from day to day and in calculating the amount of maternity pay payable for any day—

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- (a) there shall be disregarded Sunday or such other day in each week as may be prescribed in relation to that employee under section 22(10) of the Social Security Act 1975 for the purpose of calculating the daily rate of maternity allowance under that Act; and
  - (b) the amount payable for any other day shall be taken as 1/6th of the amount of the maternity pay for the week in which the day falls.
- (3) Subject to subsection (4) below, a right to maternity pay shall not affect any right of an employee in relation to remuneration under any contract of employment (hereafter in this section referred to as "contractual remuneration").
- (4) Any contractual remuneration paid to an employee in respect of a day within a payment period shall go towards discharging any liability of the employer to pay maternity pay in respect of that day, and conversely any maternity pay paid in respect of a day shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that day.
- (5) For the purposes of Part II of Schedule 4 to this Act as it applies for the calculation of a week's pay for the purposes of this section, the calculation date is the last day on which the employee worked under the contract of employment in force immediately before the beginning of her absence.

### **38 Complaint to industrial tribunal of failure to pay maternity pay**

- (1) A complaint may be presented to an industrial tribunal by an employee against her employer that he has failed to pay her the whole or any part of the maternity pay to which she is entitled.
- (2) An industrial tribunal shall not entertain a complaint under subsection (1) above unless it is presented to the tribunal before the end of the period of three months beginning with the last day of the payment period or, as the case may be, the last of the payment periods, or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.
- (3) Where an industrial tribunal finds a complaint under subsection (1) above well founded the tribunal shall order the employer to pay the complainant the amount of maternity pay which it finds is due to her.

### **39 Maternity Pay Fund**

- (1) There shall be established under the control and management of the Secretary of State a fund to be called the Maternity Pay Fund out of which payments shall be made in accordance with the following provisions of this Act.
- (2) The Secretary of State shall prepare accounts of the Maternity Pay Fund in such form as the Treasury may direct and shall send them to the Comptroller and Auditor General not later than the end of the month of November following the end of the financial year to which the accounts relate; and the Comptroller and Auditor General shall examine and certify every such account and shall lay copies thereof, together with his report thereon, before Parliament.
- (3) Any money in the Maternity Pay Fund may from time to time be paid over to the National Debt Commissioners and invested by them, in accordance with such

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directions as may be given by the Treasury, in any such manner as may be specified by an order of the Treasury for the time being in force under section 22(1) of the National Savings Bank Act 1971.

#### **40 Financing of Maternity Pay Fund**

- (1) In the Social Security Act 1975 for the words "appropriate allocation to the Redundancy Fund", wherever they occur, substitute the words " appropriate employment protection allocation ".
- (2) In section 1(1) of that Act (outline of contributory system), after the words " Redundancy Fund " insert the words " and the Maternity Pay Fund ".
- (3) In section 4(6)(b) of that Act (amount of secondary Class 1 contribution), for the words " 8-5 per cent." substitute the words " 8-55 per cent. ".
- (4) In section 122(4) of that Act (power to alter contributions), after the words " the Redundancy Fund " insert the words " or the Maternity Pay Fund ", and for the words " that Fund" substitute the words " either or both those Funds ".
- (5) In section 134 of that Act (destination of contributions etc.)—
  - (a) in subsection (4), for the words " 0.2 per cent." substitute the words " 0.25 per cent. "; and
  - (b) in subsection (5)(b), for the words " that Fund " substitute the words " the Redundancy Fund and the Maternity Pay Fund in such shares as the Secretary of State may, with the consent of the Treasury, determine. "
- (6) In Schedule 20 to that Act (glossary of expressions), at the appropriate place in alphabetical order insert in the first column the entry " Appropriate employment protection allocation " and against it in the second column insert the entry " See section 134(4). ".

#### **41 Advances out of National Loans Fund**

- (1) Subject to the provisions of subsections (2) to (4) below, the Treasury may from time to time advance out of the National Loans Fund to the Secretary of State for the purposes of the Maternity Pay Fund such sums as the Secretary of State may request; and any sums advanced to the Secretary of State under this section shall be paid into that Fund.
- (2) The aggregate amount outstanding by way of principal in respect of sums advanced to the Secretary of State under subsection (1) above shall not at any time exceed £4 million, or such larger sum, not exceeding £10 million, as the Secretary of State may by order made with the consent of the Treasury determine.
- (3) No order under subsection (2) above shall be made unless a draft of the order has been laid before Parliament and approved by resolution of each House of Parliament.
- (4) Any sums advanced to the Secretary of State under subsection (1) above shall be repaid by the Secretary of State out of the Maternity Pay Fund into the National Loans Fund in such manner and at such times, and with interest thereon at such rate, as the Treasury may direct.

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#### **42 Maternity pay rebate**

- (1) Subject to any regulations made under this section, the Secretary of State shall pay out of the Maternity Pay Fund to every employer who makes a claim under this section and who, being liable to pay, has paid maternity pay to an employee, an amount equal to the full amount of maternity pay so paid (in this section and sections 45 and 46 below referred to as a "rebate").
- (2) The Secretary of State may if he thinks fit, and if he is satisfied that it would be just and equitable to do so having regard to all the relevant circumstances, pay such a rebate to an employer who makes a claim under this section and who has paid maternity pay to an employee in circumstances in which, by reason of the time limit provided for in section 38(2) above, a complaint by the employee has been dismissed, or would not be entertained, by an industrial tribunal.
- (3) For the purposes of subsections (1) and (2) above, a payment of contractual remuneration by an employer shall be treated as a payment of maternity pay to the extent that, by virtue of section 37(4) above.—
  - (a) it extinguishes the employer's liability to pay maternity pay; or
  - (b) in a case falling within subsection (2) above, it would extinguish that liability if a complaint by the employee were not time-barred as described in that subsection.
- (4) The Secretary of State shall make provision by regulations as to the making of claims for rebates under this section and such regulations may in particular—
  - (a) require a claim to be made within such time limit as may be prescribed; and
  - (b) require a claim to be supported by such evidence as may be prescribed.

#### **43 Payments to employees out of Maternity Pay Fund**

- (1) Where an employee claims that her employer is liable to pay her maternity pay and—
  - (a) that she has taken all reasonable steps (other than: proceedings to enforce a tribunal award) to recover payment from the employer; or
  - (b) that her employer is insolvent (as defined in section 69 below for the purposes of sections 64 to 68 below);and that the whole or part of the maternity pay remains unpaid, the employee may apply to the Secretary of State under this section.
- (2) If the Secretary of State is satisfied that the claim is well founded the Secretary of State shall pay the employee out of the Maternity Pay Fund the amount of the maternity pay which appears to the Secretary of State to be unpaid.
- (3) A payment made by the Secretary of State to an employee under this section shall be treated for the purpose of discharging any liability of the employer to the employee as if it had been made by the employer.

#### **44 Unreasonable default by employer**

- (1) Where the Secretary of State makes a payment to an employee in respect of unpaid maternity pay in a case falling within section 43(1)(a) above and it appears to the Secretary of State that the employer's default in payment was without reasonable excuse, the Secretary of State may recover from the employer such amount as the

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Secretary of State considers appropriate, not exceeding the amount of maternity pay which the employer failed to pay.

- (2) Where a sum is recovered by the Secretary of State by virtue of this section that sum shall be paid into the Maternity Pay Fund.

#### **45 Supplementary provisions in relation to employer's insolvency**

- (1) Where the Secretary of State makes a payment to an employee under section 64 below (which provides for payments out of the Redundancy Fund in respect of certain debts where an employer is insolvent) and that payment, in whole or in part, represents arrears of pay, then, in ascertaining for the purpose of section 43 above the amount of any unpaid maternity pay, section 37(4) above shall apply as if the arrears of pay in question had been duly paid by the employer to the employee in accordance with the contract of employment.
- (2) Where the Secretary of State makes a payment to an employee out of the Redundancy Fund under section 64 below which, if it had been made by the employer to the employee, would have attracted a rebate from the Maternity Pay Fund in accordance with section 42 above, then, the Secretary of State shall make a payment out of the Maternity Pay Fund into the Redundancy Fund of an amount corresponding to the amount of rebate which would have been so payable.

#### **46 Complaint and appeals to industrial tribunal**

- (1) A person who has—
- (a) made a claim for a rebate under section 42 above, in a case to which subsection (1) of that section applies; or
  - (b) applied for a payment under section 43 above,
- may, subject to subsection (5) below, present a complaint to an industrial tribunal that—
- (i) the Secretary of State has failed to make any such payment; or
  - (ii) any such payment made by the Secretary of State is less than the amount which should have been paid.
- (2) Where an industrial tribunal finds that the Secretary of State ought to make any such payment or further payment, it shall make a declaration to that effect and shall also declare the amount of any such payment which it finds the Secretary of State ought to make.
- (3) An employer who has made a claim for a rebate under section 42 above, in a case to which subsection (2) of that section applies, may, subject to subsection (5) below, appeal to an industrial tribunal on the ground that—
- (a) the Secretary of State has refused to pay a rebate ; or
  - (b) any rebate paid by the Secretary of State is less than the amount which should have been paid,
- and if on any such appeal the tribunal is satisfied that it is just and equitable having regard to all the relevant circumstances that a rebate should be paid or, as the case may be, finds that a further payment by way of rebate should be made, the tribunal shall determine accordingly, and the Secretary of State shall comply with the determination.
- (4) Where the Secretary of State determines that an amount is recoverable from an employer under section 44 above, the employer may, subject to subsection (5) below,

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appeal to an industrial tribunal; and if on any such appeal the tribunal is satisfied that no amount should be recovered from the employer, or that a lesser or greater amount should be recovered (but in any case not exceeding the amount of maternity pay which the employer failed to pay) the tribunal shall determine accordingly and the amount, if any, so determined shall be the amount recoverable from the employer by the Secretary of State.

- (5) An industrial tribunal shall not entertain a complaint or appeal under this section unless it is presented to the tribunal within the period of three months beginning with the date on which the relevant decision of the Secretary of State was communicated to the complainant or appellant or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint or appeal to be presented within the period of three months.

#### **47 Provisions as to information**

- (1) Where an application is made to the Secretary of State by an employee under section 43 above, the Secretary of State may require—
- (a) the employer to provide him with such information as the Secretary of State may reasonably require for the purpose of determining whether the employee's application is well founded; and
  - (b) any person having the custody or control of any relevant records or other documents to produce for examination on behalf of the Secretary of State any such document in that person's custody or under his control which is of such a description as the Secretary of State may require.
- (2) Any such requirement shall be made by a notice in writing given to the person on whom the requirement is imposed and may be varied or revoked by a subsequent notice so given.
- (3) If a person refuses or wilfully neglects to furnish any information or produce any document which he has been required to furnish or produce by a notice under this section he shall be liable on summary conviction to a fine not exceeding £100.
- (4) If any person in making a claim under section 42 above or an application under section 43 above or in purporting to comply with a requirement of a notice under this section knowingly or recklessly makes any false statement he shall be liable on summary conviction to a fine not exceeding £400.

#### **48 Right to return to work**

- (1) The right to return to work of an employee who has been absent from work wholly or partly because of pregnancy or confinement is, subject to the following provisions of this Act, a right to return to work with her original employer, or, where appropriate, his successor, at any time before the end of the period of 29 weeks beginning with the week in which the date of confinement falls, in the job in which she was employed under the original contract of employment and on terms and conditions not less favourable than those which would have been applicable to her if she had not been so absent.
- (2) In subsection (1) above—
- (a) " job ", in relation to an employee, means the nature of the work which she is employed to do in accordance with her contract and the capacity and place in which she is so employed ; and



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- (b) " terms and conditions not less favourable than those which would have been applicable to her if she had not been so absent" means, as regards seniority, pension rights and other similar rights, that the period or periods of employment prior to the employee's absence shall be regarded as continuous with her employment following that absence.
- (3) In sections 35 and 49 to 51 of, and Schedule 3 to, this Act, except where the context otherwise requires, " to return to work " means to return to work in accordance with subsection (1) above, and cognate expressions shall be construed accordingly.
- (4) If an employee is entitled to return to work in accordance with subsection (1) above, but it is not practicable by reason of redundancy for the employer to permit her so to return to work, she shall be entitled, where there is a suitable available vacancy, to be offered alternative employment with her employer (or his successor), or an associated employer, under a new contract of employment complying with subsection (5) below.
- (5) The new contract of employment must be such that—
  - (a) the work to be done under the contract is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances : and
  - (b) the provisions of the new contract as to the capacity and place in which she is to be employed and as to the other terms and conditions of her employment are not substantially less favourable to her than if she had returned to work in accordance with subsection (1) above.
- (6) The remedies of an employee for infringement of either of the rights mentioned in this section are those conferred by or by virtue of the provisions of sections 49 and 50 below and Schedule 3 to this Act.

#### **49 Exercise of right to return**

- (1) An employee shall exercise her right to return to work by notifying the employer (who may be her original employer or a successor of that employer) at least one week before the day on which she proposes to return of her proposal to return on that day (hereafter in this section and section 50 below and Schedule 3 to this Act referred to as the " notified day of return ").
- (2) An employer may postpone an employee's return to work until a date not more than four weeks after the notified day of return if he notifies her before that day that for specified reasons he is postponing her return until that date, and accordingly she will be entitled to return to work with him on that date.
- (3) Subject to subsection (4) below, an employee may—
  - (a) postpone her return to work until a date not exceeding four weeks from the notified day of return, notwithstanding that that date falls after the end of the period of 29 weeks mentioned in section 48(1) above ; and
  - (b) where no day of return has been notified to the employer, extend the time during which she may exercise her right to return in accordance with subsection (1) above, so that she returns to work not later than four weeks from the expiration of the said period of 29 weeks;if before the notified day of return or, as the case may be, the expiration of the period of 29 weeks she gives the employer a certificate from a registered medical practitioner stating that by reason of disease or bodily or mental disablement she will be incapable of work on the notified day of return or the expiration of that period, as the case may be.

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- (4) Where an employee has once exercised a right of postponement or extension under subsection (3)(a) or (b) above, she shall not again be entitled to exercise a right of postponement or extension under that subsection in connection with the same return to work.
- (5) If an employee has notified a day of return but there is an interruption of work (whether due to industrial action or some other reason) which renders it unreasonable to expect the employee to return to work on the notified day of return, she may instead return to work when work resumes after the interruption or as soon as reasonably practicable thereafter.
- (6) If no day of return has been notified and there is an interruption of work (whether due to industrial action or some other reason) which renders it unreasonable to expect the employee to return to work before the expiration of the period of 29 weeks referred to in section 48(1) above, or which appears likely to have that effect, and in consequence the employee does not notify a day of return, the employee may exercise her right to return in accordance with subsection (1) above so that she returns to work at any time before the end of the period of 14 days from the end of the interruption notwithstanding that she returns to work outside the said period of 29 weeks.
- (7) Where the employee has either—
- (a) exercised the right under subsection (3)(b) above to extend the period during which she may exercise her right to return; or
  - (b) refrained from notifying the day of return in the circumstances described in subsection (6) above,
- the other of those subsections shall apply as if for the reference to the expiration of the period of 29 weeks there were substituted a reference to the expiration of the further period of four weeks or, as the case may be, of the period of 14 days from the end of the interruption of work.
- (8) Where—
- (a) an employee's return is postponed under subsection (2) or (3)(a) above, or
  - (b) the employee returns to work on a day later than the notified day of return in the circumstances described in subsection (5) above,
- then, subject to subsection (4) above, references in those subsections and in section 50 below and Schedule 3 to this Act to the notified day of return shall be construed as references to the day to which the return is postponed or, as the case may be, that later day.

## **50 Failure to permit to return treated as dismissal**

- (1) Where an employee is entitled to return to work and has exercised her right to return in accordance with section 49 above but is not permitted to return to work, then, she shall be treated for the purposes of—
- (a) the provisions of this Act and the 1974 Act relating to unfair dismissal; and
  - (b) the Redundancy Payments Act 1965 ;
- as if she had been employed until the notified day of return, and, if she would not otherwise be so treated, as having been continuously employed until that day, and as if she had been dismissed with effect from that day for the reason for which she was not permitted to return.

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- (2) The provisions of Schedule 3 to this Act shall have effect for the purpose of supplementing the foregoing provisions of this Act relating to an employee's right to return to work.

## **51 Dismissal of replacement**

Where an employer—

- (a) on engaging an employee informs the employee in writing that his employment will be terminated on the return to work of another employee who is, or will be, absent wholly or partly because of pregnancy or confinement; and
- (b) dismisses the first-mentioned employee in order to make it possible to give work to the other employee;

then, for the purposes of paragraph 6(1)(b) of Schedule 1 to the 1974 Act (employer to show substantial reason for dismissal), but without prejudice to the application of paragraph 6(8) of that Schedule (whether dismissal fair or unfair to depend on whether employer acted reasonably), the dismissal shall be regarded as having been for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.

## **52 Interpretation of ss. 35 to 51**

In sections 35 to 51 above, this section and Schedule 3 to this Act, except so far as the context otherwise requires.—

" certified midwife " means a midwife certified under the Midwives Act 1951 or the Midwives (Scotland) Act 1951;

" confinement " means the birth of a living child or the birth of a child whether living or dead after 28 weeks of pregnancy;

" expected week of confinement " means the week in which it is expected that confinement will take place ;

" original contract of employment ", in relation to an employee who is absent from work wholly or partly because of pregnancy or confinement, means the contract under which she worked immediately before the beginning of her absence or, if she entered into that contract during her pregnancy by virtue of section 34(2) above or otherwise by reason of her pregnancy, the contract under which she was employed immediately before she entered into the later contract or, if there was more than one later contract, the first of the later contracts;

" week "—

- (a) in sections 35(2)(c) and 49(1) above, means a period of seven days;
- (b) in the expression " expected week of confinement ", means a period of seven days beginning with midnight between Saturday and Sunday; and
- (c) in any other case, means, in relation to an employee whose remuneration is calculated weekly by a week ending with a day other than Saturday, a week ending with that other day, and in relation to any other employee, a week ending with Saturday.