

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 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.
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.

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

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.