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STATUTORY INSTRUMENTS

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**2014 No. 3050**

**The Shared Parental Leave Regulations 2014**

**PART 5**

**TAKING SHARED PARENTAL LEAVE**

**Work during shared parental leave**

**37.**—(1) An employee may carry out work for the employer during a period of shared parental leave without bringing the period of leave to an end.

(2) An employee may work no more than 20 days under paragraph (1) for each employer during the period in which shared parental leave may be taken (see regulations 7(1) and 23(1)).

(3) For the purposes of this regulation, any work carried out on any day constitutes a day's work.

(4) Subject to paragraph (5), for the purposes of this regulation, "work" means any work done under the contract of employment and includes training or any activity undertaken for the purposes of keeping in touch with the workplace.

(5) Contact to discuss an employee's return to work or any other reasonable contact from time to time between an employer and an employee does not constitute work for the purposes of this regulation.

(6) This regulation does not confer any right on an employer to require that any work be carried out during a period of shared parental leave, nor any right on an employee to work during a period of leave.

(7) Any day's work carried out under this regulation does not have the effect of extending the total duration of a period of shared parental leave.

**Application of terms and conditions during shared parental leave**

**38.**—(1) An employee who takes shared parental leave is, during any period of leave—

(a) entitled to the benefit of all of the terms and conditions of employment which would have applied if the employee had not been absent, and

(b) bound by any obligations arising under those terms and conditions, subject only to the exception in section 75I(1)(b)(1) of the 1996 Act.

(2) In paragraph (1), "terms and conditions of employment" has the meaning given by section 75I(2) of the 1996 Act, and accordingly does not include terms and conditions about remuneration.

(3) For the purposes of section 75I of the 1996 Act, only sums payable to the employee by way of wages or salary are to be treated as remuneration.

(4) In the case of accrual of rights under an employment-related benefit scheme within the meaning given by paragraph 7 of Schedule 5 to the Social Security Act 1989(2), nothing in paragraph (1)(a) above imposes a requirement which exceeds the requirements of paragraph 5C(3) of that Schedule.

### **Redundancy during shared parental leave**

**39.**—(1) This regulation applies where, during a period in which an employee is taking shared parental leave, it is not practicable by reason of redundancy for an employer to continue to employ that employee under the existing contract of employment.

(2) Where there is a suitable alternative vacancy, the employee is entitled to be offered (before the end of the employee’s employment under the contract of employment) alternative employment with the employer, the employer’s successor, or an associated employer, under a new contract of employment which complies with paragraph (3) and takes effect immediately on the ending of the employee’s employment under the previous contract.

(3) The new contract of employment must be such that—

- (a) the work to be done under it is of a kind which is both suitable in relation to the employee and appropriate for the employee to do in the circumstances, and
- (b) its provisions as to the capacity and place in which the employee is to be employed, and as to the other terms and conditions of the employee’s employment, are not substantially less favourable to the employee than if the employee had continued to be employed under the previous contract.

### **Right to return after shared parental leave**

**40.**—(1) Where an employee returns to work after a period of shared parental leave which, when added to any other period of relevant statutory leave (see paragraph (3)) taken by the employee in relation to C, means that the total amount of relevant statutory leave taken by the employee in relation to C is 26 weeks or less, the employee is entitled to return from leave to the job in which the employee was employed before the absence, except where paragraph (2)(b) applies.

(2) Where an employee returns to work after a period of shared parental leave which—

- (a) when added to any other period of relevant statutory leave taken by the employee in relation to C, means that the total amount of relevant statutory leave taken by the employee in relation to C is more than 26 weeks; or
- (b) was the last of two or more consecutive periods of relevant statutory leave which included a period of parental leave of more than four weeks, a period of additional maternity leave, or a period of additional adoption leave,

the employee is entitled to return from leave to the job in which the employee was employed before the absence, or, if it is not reasonably practicable for the employer to permit the employee to return to that job, to another job which is both suitable for the employee and appropriate for the employee to do in the circumstances.

(3) In this regulation—

“additional adoption leave” means leave under section 75B of the 1996 Act(4);

“additional maternity leave” means leave under section 73 of the 1996 Act(5);

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(2) 1989 c. 24.

(3) Paragraph 5C was inserted by the Children and Families Act 2014, Schedule 7, paragraphs 1 and 4.

(4) Section 75B was inserted by the Employment Act 2002, (c. 22), section 3.

(5) Section 73 was substituted by the Employment Relations Act 1999 (c. 26), Schedule 4, Part 1, and amended by the Employment Act 2002, section 17, and by the Work and Families Act 2006 (c. 18), Schedule 1, paragraph 32.

“parental leave” means leave under section 76 of the 1996 Act(6);

“relevant statutory leave” means leave provided for in Part 8 of the 1996 Act(7) except any period of parental leave.

(4) This regulation does not apply where it is not practicable by reason of redundancy for the employer to continue to employ the employee under the existing contract of employment.

### **Right to return after shared parental leave: supplementary**

**41.**—(1) For the purposes of regulation 40 a job is—

- (a) the nature of the work which the employee is employed to do under the contract of employment; and
- (b) the capacity and place the employee was employed in before the absence.

(2) References in regulation 40 to the job in which the employee was employed before the absence are references to the job in which the employee was employed—

- (a) if the return is from an isolated period of shared parental leave, immediately before that period, or
- (b) if the return is from consecutive periods of leave provided for in Part 8 of the 1996 Act, immediately before the first such period.

(3) The right to return under regulation 40 is a right to return—

- (a) with the employee’s seniority, pension rights and similar rights as they would have been if there had been no absence, and
- (b) on terms and conditions not less favourable than those which would have applied if there had been no absence.

(4) In the case of accrual of rights under an employment-related benefit scheme within the meaning given by paragraph 7 of Schedule 5 to the Social Security Act 1989, nothing in paragraph (3) (a) above imposes a requirement which exceeds the requirements of paragraphs 5A to 6 of that Schedule(8).

### **Protection from detriment**

**42.**—(1) An employee is entitled under section 47C(9) of the 1996 Act not to be subjected to any detriment by any act, or any deliberate failure to act, by an employer because—

- (a) the employee took, sought to take, or made use of the benefits of, shared parental leave;
- (b) the employer believed that the employee was likely to take shared parental leave; or
- (c) the employee undertook, considered undertaking, or refused to undertake work in accordance with regulation 37.

(2) For the purposes of paragraph (1)(a), the employee makes use of the benefits of shared parental leave if, during a period of shared parental leave, the employee benefits from any of the terms and conditions of employment preserved by regulation 38 during that period.

(3) Paragraph (1) does not apply where the detriment in question amounts to dismissal within the meaning of Part 10 of the 1996 Act.

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(6) Section 76 was substituted by the Employment Relations Act 1999, Schedule 4, Part 1.

(7) Part 8 was substituted by the Employment Relations Act 1999. Sections 75A to 75D were inserted by the Employment Act 2002, sections 1, and sections 80A to 80E were inserted by section 3 of that Act.

(8) Paragraph 5A was inserted by the Pensions Act 2004 (c. 35), section 265(1), and amended by the Work and Families Act 2006, Schedule 1, paragraph 1. Paragraph 5B was inserted by the Pensions Act 2004, section 265(1).

(9) Section 47C was inserted by the Employment Relations Act 1999, Schedule 4, Part 3, paragraphs 5 and 8, and amended by the Children and Families Act 2014 (c. 6), Schedule 7, paragraphs 29 and 31; there are other amending instruments but none is relevant.

## Unfair dismissal

**43.**—(1) An employee who is dismissed is entitled under section 99(10) of the 1996 Act to be regarded for the purposes of Part 10 of that Act as unfairly dismissed if—

- (a) the reason or principal reason for the dismissal is of a kind specified in paragraph (3), or
- (b) the reason or principal reason for the dismissal is that the employee is redundant and regulation 39 has not been complied with.

(2) An employee who is dismissed is to be regarded for the purposes of Part 10 of the 1996 Act as unfairly dismissed if—

- (a) the reason or principal reason for the dismissal is that the employee was redundant,
- (b) it is shown that the circumstances constituting the redundancy applied equally to one or more employees in the same undertaking who had positions similar to that held by the dismissed employee and who have not been dismissed by an employer, and
- (c) it is shown that the reason or principal reason for which the employee was selected for dismissal was a reason of a kind specified in paragraph (3).

(3) The reasons referred to in paragraphs (1) and (2) are reasons connected with any of the following facts—

- (a) that the employee took, sought to take, or made use of the benefits of, shared parental leave;
- (b) that the employer believed that the employee was likely to take shared parental leave; or
- (c) that the employee undertook, considered undertaking, or refused to undertake work in accordance with regulation 37.

(4) For the purposes of paragraph (3)(a), the employee makes use of the benefits of shared parental leave if, during a period of shared parental leave, the employee benefits from any of the terms and conditions of employment preserved by regulation 38 during that period.

## Calculation of a week's pay for the purposes of Chapter 2 of Part 14 of the 1996 Act

**44.** Where—

- (a) under Chapter 2 of Part 14 of the 1996 Act, the amount of a week's pay of an employee falls to be calculated by reference to the average rate of remuneration, or the average amount of remuneration, payable to the employee in respect of a period of 12 weeks ending on a particular date (referred to as the "calculation date"),
- (b) during a week in that period, the employee was absent from work on shared parental leave, and
- (c) remuneration is payable to the employee in respect of that week under the employee's contract of employment, but the amount payable is less than the amount that would be payable if the employee were working,

that week shall be disregarded for the purpose of the calculation and account must be taken of remuneration in earlier weeks so as to bring up to 12 the number of weeks of which account is taken.

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(10) Section 99 was substituted by the Employment Relations Act 1999, Schedule 4, Part 3, paragraphs 5 and 16, and amended by the Children and Families Act 2014, Schedule 7, paragraphs 29 and 39; there are other amending instruments but none is relevant.