

Subsidiary Legislation made under s. 86.

Employment (Maternity and Parental Leave, and Health and Safety) Regulations, 1996

LN.1996/014

Amending enactments	Relevant current provisions	<i>Commencement</i> 1.1.1996
		Commencement date
LN. 1999/162	rr. 2-4, 6, 7(2), 8(1)	5.7.1999
2001/112	Title, 25-30, Sch.1	1.12.2001
2013/045	rr. 26(1), 28(a)	8.3.2013
2015/234	rr. 31-33, Sch.1	21.12.2015
Act. 2016-20	rr. 17(3)-(4), (6), 18(6)-(8), 20(1), (3), 21(1), 33(1)-(3)	13.10.2016

Implementing:

Directive 96/34/EC

Directive 97/75/EC

Transposing:

Directive 89/391/EEC

Directive 92/85/EEC

Directive 2010/18/EU

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PART I.
GENERAL.

Title and commencement.

1.(1) These Regulations may be cited as the Employment (Maternity and Parental Leave, and Health and Safety) Regulations, 1996 and subject to subregulations (2) and (3), shall come into effect on the 1st day of January, 1996.

(2) Part II of these Regulations shall have effect only in relation to women whose expected week of childbirth begins on or after the 5th day of May, 1996.

(3) The amendment to section 62 of the Employment Act made in regulation 23 shall apply to any dismissal where the effective date of termination in relation to that dismissal falls on or after the 1st day of February, 1996.

Interpretation and application.

2.(1) In these Regulations—

“Director” shall be interpreted in accordance with the provisions of the Social Security (Insurance) Act;

“the effective date of termination” has the meaning given to that expression in Part V of the Act;

“the expected week of childbirth” means the week beginning with midnight between Saturday and Sunday in which it is expected childbirth will take place;

“given birth” means delivered of a living child, or after twenty-four weeks of pregnancy, a still born child;

“registered” in relation to a medical practitioner or midwife means registered in accordance with the Medical and Health Act;

“representative”, for the purposes of Part III, in relation to a worker means any person elected, chosen or designated in accordance with any law or practice to represent employees in matters relating to the safety and health protection of such workers at work.

(2) The provisions of this Part, Parts II and III are binding on the Crown.

PART II.
MATERNITY RIGHTS.

General right to maternity leave.

3.(1) An employee who is absent from work at any time during her maternity leave period shall, subject to regulation 6 and 7, be entitled to the benefit of the terms and conditions of employment which would have been applicable to her if she had not been absent (and had not been pregnant or given birth to a child).

(2) Except as provided in sub-regulation (3), this regulation does not confer any entitlement to remuneration.

(3) Subject to section 11A of the Social Security (Insurance) Act, during her maternity leave period, an employee shall be entitled to maternity allowance.

(4) In this regulation, “maternity allowance” has the same meaning as in the Social Security (Insurance) Act.

Commencement of maternity leave period.

4.(1) Subject to subregulation (2), an employee’s maternity leave period commences with—

- (a) the date which, in accordance with regulation 6, she notifies to her employer and the Director as the date on which she intends her period of absence from work in exercise of her right to maternity leave to commence; or
- (b) if earlier, the first day on which she is absent from work wholly or partly because of pregnancy or childbirth after the beginning of the sixth week before the expected week of childbirth.

(2) Where childbirth occurs before the day with which the employee’s maternity leave period would otherwise commence, her maternity leave period shall commence with the day on which childbirth occurs.

Duration of maternity leave.

5. (1) Subject to subregulations (2), (3) and (4), an employee’s maternity leave period shall continue for the period of fourteen weeks from its commencement or until the birth of the child, if later.

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(2) Subject to subregulation (3), where any requirement imposed by or under this regulation or any law prohibits her working for any period after the end of the period mentioned in subregulation (1) by reason of her having recently given birth, her maternity leave period shall continue until the expiry of that later period.

(3) Where an employee is dismissed—

- (a) after the commencement of her maternity leave period but before the time when (apart from this subregulation) that period would end; or
- (b) before the period specified in subregulation (4) ends,

the period ends at the time of the dismissal.

(4) An employee shall not work, or be permitted by her employer to work at any time during the period of two weeks commencing immediately after the day on which she has given birth.

(5) Where an employee is pregnant, and has notified her employer in writing of that fact, she shall be entitled to have time off, without loss of pay, in order to attend ante-natal examinations, where such examinations have to take place during working hours.

(6) An employer guilty of an offence consisting of a breach of a prohibition imposed on him by subregulation (4) shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Notice of commencement of leave.

6.(1) An employee shall not have the right conferred by regulation 3 unless—

- (a) she notifies her employer and the Director of the date (within the restriction imposed by subregulation (2)) (“the notified leave date”) on which she intends her period of absence from work in exercise of her right to maternity leave to commence—
 - (i) not less than twenty-one days before that date; or
 - (ii) if that is not reasonably practicable, as soon as is reasonably practicable;
- (b) where she is first absent from work wholly or partly because of pregnancy or childbirth before the notified leave date, or before she has notified such a date, and after the beginning of the sixth week before the expected week of childbirth, she

notifies her employer and the Director as soon as is reasonably practicable that she is absent for that reason; or

- (c) where childbirth occurs before the notified leave date or before she has notified such a date, she notifies her employer and the Director that she has given birth as soon as is reasonably practicable after the birth,

and any notice she is required to give under paragraphs (a) to (c) shall, if her employer and the Director so requests, be given in writing.

(2) No date may be notified under subregulation (1)(a) which occurs before the beginning of the eleventh week before the expected week of childbirth.

(3) Where, in the case of an employee, either paragraph (b) or (c) of subregulation (1) has fallen to be satisfied, and has been so satisfied, nothing in paragraph (a) of that subregulation shall impose any requirement on the employee.

Requirement to inform employer of pregnancy, etc.

7.(1) An employee shall not have the right conferred by regulation 3 unless she informs her employer in writing at least twenty-one days before her maternity leave period commences or, if that is not reasonably practicable, as soon as is reasonably practicable—

- (a) that she is pregnant; and
- (b) of the expected week of childbirth or, if the childbirth has occurred, the date on which it occurred.

(2) An employee shall not have the right conferred by regulation 3 or 5(5) unless, if requested to do so by her employer and the Director, she produces for his inspection a certificate from a registered medical practitioner or a registered midwife stating the expected week of childbirth.

Requirement to inform employer of return during maternity leave period.

8.(1) An employee who intends to return to work earlier than the end of her maternity leave period shall give to her employer and the Director not less than seven days notice of the date on which she intends to return.

(2) If an employee returns to work as mentioned in subregulation (1) without notifying her employer of her intention to do so or without giving him the notice

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required by that subregulation her employer shall be entitled to postpone her return to a date such as will secure, subject to subregulation (3), that he has seven days notice of her return.

(3) An employer is not entitled under subregulation (2) to postpone an employee's return to work to a date after the end of her maternity leave period.

(4) If an employee who has been notified under subregulation (2) that she is not to return to work before the date specified by her employer does return to work before that date, the employer shall be under no contractual obligation to pay her remuneration until the date specified by him as the date on which she may return.

Special provision where redundancy during maternity leave period.

9.(1) Where during an employee's maternity leave period it is not practicable by reason of redundancy for the employer to continue to employ her under her existing contract of employment, she shall be entitled, where there is a suitable available vacancy, to be offered (before the ending of her employment under that contract) alternative employment with her employer or his successor, or an associated employer, under a new contract of employment which complies with subregulation (2) (and takes effect immediately on the ending of her employment under the previous contract).

- (2) 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 continued to be employed under the previous contract.

Contractual right to maternity leave.

10. (1) An employee who has the right to maternity leave under regulation 3 and a right to maternity leave under a contract of employment or otherwise may not exercise the two rights separately but may, in taking maternity leave, take advantage of whichever right is, in any particular respect, the more favourable.

(2) The provisions of regulations 4 to 9 shall apply, subject to any modifications necessary to give effect to any more favourable contractual terms, to the exercise of the composite right described in subregulation (1) as they apply to the exercise of the right under regulation 3.

Right to return to work.

11.(1) An employee who—

- (a) has the right conferred by regulation 3; and
- (b) has, at the beginning of the eleventh week before the expected week of childbirth, been continuously employed for a period of not less than one year,

shall also have the right to return to work at any time during the period beginning at the end of her maternity leave period and ending twenty-nine weeks after the beginning of the week in which childbirth occurs.

(2) An employee's right to return to work under this regulation is the right to return to work with the person who was her employer before the end of her maternity leave period, or (where appropriate) his successor, in the job in which she was then employed—

- (a) on terms and conditions as to remuneration not less favourable than those which would have been applicable to her had she not been absent from work at any time since the commencement of her maternity leave period;
- (b) with her seniority, pension rights and similar rights as they would have been if the period or periods of her employment prior to the end of her maternity leave period were continuous with her employment following her return to work;
- (c) otherwise on terms and conditions no less favourable than those which would have been applicable to her had she not been absent from work after the end of her maternity leave period.

Requirement to give notice of return to employer.

12. (1) An employee shall not have the right to return to work under regulation 11 unless she includes with the information required by regulation 7(1) the information that she intends to exercise the right.

(2) Where, not earlier than twenty-one days before the end of her maternity leave period, an employee is requested in accordance with subregulation (3) by her employer, or a successor of his, to give him written confirmation that she intends to exercise the right to return to work under regulation 11, the employee shall not be entitled to that right unless she gives the requested confirmation within fourteen days of receiving the request or, if that is not reasonably practicable, as soon as is reasonably practicable.

- (3) A request under subregulation (2) shall be—
- (a) made in writing; and
 - (b) accompanied by a written statement of the effect of that subregulation.

Special provision where redundancies occur before return to work.

13. (1) Where an employee has the right to return to work under regulation 11, but it is not practicable by reason of redundancy for the employer to permit her to return in accordance with that right, 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 subregulation (2).

- (2) 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 pursuant to her right to return.

Exercise of right to return to work.

14. (1) An employee shall exercise the right to return to work under regulation 11 by giving written notice to the employer (who may be her employer before the end of her maternity leave period or a successor of his) at least twenty-one days before the day on which she proposes to return of her proposal to return on that day (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 day, and accordingly she will be entitled to return to work with him on that date.

- (3) Subject to subregulation (4), 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 twenty-nine weeks beginning with the week in which childbirth occurred; 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 subregulation (1), so that she returns to work not later than four weeks from the end of that period of twenty-nine weeks,

if, before the notified day of return (or the end of the period of twenty-nine 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 end of that period).

(4) Where an employee has once exercised a right of postponement or extension under subregulation (3)(a) or (b), she shall not again be entitled to exercise a right of postponement or extension under that subregulation 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 afterwards.

(6) If—

- (a) no day of return has been notified;
- (b) 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 end of the period of twenty-nine weeks beginning with the week in which childbirth occurred, or which appears likely to have that effect; and
- (c) in consequence, the employee does not notify a day of return,

the employee may exercise her right to return in accordance with subregulation (1) so that she returns to work at any time before the end of the period of twenty-eight days from the end of the interruption notwithstanding that she returns to work outside the period of twenty-nine weeks.

(7) Where the employee has either—

- (a) exercised the right under subregulation (3)(b) 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 subregulation (6),

the other of those subregulations shall apply as if for the reference to the end of the period of twenty-nine weeks there were substituted a reference to the end of the further period of four weeks or, as the case may be, of the period of twenty-eight days from the end of the interruption of work.

Contractual rights.

15. An employee who has the right to return to work under regulation 11 and a right to return to work after absence because of pregnancy or childbirth under a contract of employment or otherwise may not exercise the two rights separately but may, in returning to work, take advantage of whichever right is, in any particular respect, the more favourable.

Suspension from work on maternity grounds.

16. (1) For the purposes of regulations 17 and 18 an employee is suspended on maternity grounds where, in consequence of any requirement imposed by or under any relevant statutory provision she is suspended from work by her employer on the ground that she is pregnant, has recently given birth or is breastfeeding a child.

(2) For the purposes of this regulation, and regulations 17 and 18, an employee shall be regarded as suspended from work only if, and so long as, she continues to be employed by her employer, but is not provided with work or (disregarding alternative work for the purposes of regulation 17) does not perform the work she normally performed before the suspension.

(3) For the purposes of subregulation (1), “relevant statutory provision” has the meaning given to that expression in section 6 of the Factories Act.

Right to offer of alternative work.

17. (1) Where an employer has available suitable alternative work for an employee the employee has a right to be offered to be provided with it before being suspended on maternity grounds.

(2) For alternative work to be suitable for an employee for the purposes of this regulation—

- (a) the work must be of a kind which is both suitable in relation to her and appropriate for her to do in the circumstances; and
- (b) the terms and conditions applicable to her for performing the work, if they differ from the corresponding terms and conditions applicable to her for performing the

work she normally performs under her contract of employment, must not be substantially less favourable to her than those corresponding terms and conditions.

(3) An employee may present a complaint to the Employment Tribunal that her employer has failed to offer to provide her with work in contravention of subregulation (1).

(4) The Employment Tribunal shall not entertain a complaint under subregulation (3) unless it is presented to the tribunal before the end of the period of three months beginning with the first day of the suspension, 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.

(5) Where the Industrial Tribunal finds the complaint well-founded it may make an award of compensation to be paid by the employer to the employee.

(6) The amount of the compensation shall be such as the Employment Tribunal considers just and equitable in all the circumstances having regard to the infringement of the complainant's right under subregulation (1) by the employer's failure complained of and to any loss sustained by the complainant which is attributable to that failure.

Right to remuneration on suspension.

18. (1) An employee who is suspended on maternity grounds shall be entitled to be paid remuneration by her employer while she is so suspended.

(2) An employee shall not be entitled to remuneration under this regulation in respect of any period during which her employer has offered to provide her with work which is suitable alternative work for the purposes of regulation 17 and the employee has unreasonably refused to perform that work.

(3) The amount of remuneration payable by an employer to an employee under this regulation shall be a week's pay in respect of each week of the period of suspension and if in any week remuneration is payable in respect only of part of that week the amount of a week's pay shall be reduced proportionately.

(4) Subject to subregulation (5), a right to remuneration under this regulation shall not affect any right of an employee in relation to remuneration under her contract of employment (in subregulation (5) referred to as "contractual remuneration").

(5) Any contractual remuneration paid by an employer to an employee in respect of any period shall go towards discharging the employer's liability under this regulation in respect of that period and, conversely, any payment of remuneration in discharge of an employer's

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liability under this regulation in respect of any period shall go towards discharging any obligation of the employer to pay contractual remuneration in respect of that period.

(6) An employee may present a complaint to the Employment Tribunal that her employer has failed to pay the whole or any part of remuneration to which she is entitled under this regulation.

(7) The Employment Tribunal shall not entertain a complaint relating to remuneration under this regulation in respect of any day unless the complaint is presented to the tribunal before the end of the period of three months beginning with that day, 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.

(8) Where the Employment Tribunal finds a complaint under subregulation (6) well-founded, the tribunal shall order the employer to pay the complainant the amount of remuneration which it finds is due to her.

PART III. HEALTH AND SAFETY.

Right not to suffer detriment in health and safety cases.

19. (1) An employee has the right not to be subjected to any detriment by an act, or any deliberate failure to act, by his employer done on the ground that—

- (a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, he carried out, or proposed to carry out, any such activities;
- (b) being a representative of workers on matters of health and safety at work—
 - (i) in accordance with arrangements established under or by virtue of any law; or
 - (ii) by reason of being acknowledged as such by the employer, he performed, or proposed to perform, any functions as such a representative;
- (c) being an employee at a place where—
 - (i) there was no such representative; or

- (ii) there was such a representative but it was not reasonably practicable for the employee to raise the matter by those means,

he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety;

- (d) in circumstances of danger which he reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, he left, or proposed to leave, or (while the danger persisted) refused to return to, his place of work or any dangerous part of his place of work; or
- (e) in circumstances of danger which he reasonably believed to be serious and imminent, he took, or proposed to take, appropriate steps to protect himself or other persons from the danger.

(2) For the purposes of subregulation (1)(e) whether steps which an employee took, or proposed to take, were appropriate shall be judged by reference to all the circumstances including, in particular, his knowledge and the facilities and advice available to him at the time.

(3) An employee shall not be regarded as having been subjected to any detriment on the ground specified in subregulation (1)(e) if the employer shows that it was, or would have been, so negligent for the employee to take the steps which he took, or proposed to take, that a reasonable employer might have treated him as the employer did.

(4) This regulation shall not apply where the detriment in question amounts to dismissal.

Complaint of detriment.

20. (1) An employee may present a complaint to the Employment Tribunal on the ground that he has been subjected to a detriment in contravention of regulation 19.

(2) On such a complaint it shall be for the employer to show the ground on which any act, or deliberate failure to act, was done.

(3) The Employment Tribunal shall not consider a complaint under this regulation unless it is presented—

- (a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them; or

(b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period, within such further period as it considers reasonable.

(4) For the purposes of subregulation (3)–

(a) where an act extends over a period, the “date of the act” means the last day of that period; and

(b) a deliberate failure to act shall be treated as done when it was decided on,

and, in the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

Compensation in the event of detriment.

21. (1) Where the Employment Tribunal finds that a complaint under regulation 20 is well-founded, it shall make a declaration to that effect and may make an award of compensation to be paid to the complainant in respect of the act or failure to act complained of.

(2) The amount of the compensation awarded shall be such as the tribunal considers just and equitable in all the circumstances having regard to the infringement complained of and to any loss which is attributable to the act or failure which infringed his right.

(3) The loss shall be taken to include–

(a) any expenses reasonably incurred by the complainant in consequence of the act or failure complained of; and

(b) loss of any benefit which he might reasonably be expected to have had but for that act or failure.

(4) In ascertaining the loss, the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law.

(5) Where the tribunal finds that the act or failure complained of was to any extent caused or contributed to by action of the complainant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

PART IV.

AMENDMENT TO THE EMPLOYMENT ACT.

Amendment to section 60.

22. Section 60 of the Employment and Training Act is amended—

(a) in sub-section (1) by omitting the expression “sub-section (2)” and substituting therefor the expression “sub-sections (2) to (4)”;

(b) by inserting after sub-section (2) the following sub-sections —

“(3) Sub-section (1) shall not apply to the dismissal of an employee if it is shown that the reason (or, if more than one, the principal reason) for the dismissal, or in a redundancy case, for selecting the employee for dismissal, was one of those specified in section 65A(1)(a) to (e), 65B(1)(a) to (e) or 65C(1).

(4) Sub-section (1) shall not apply to a case falling within section 65A(f).”.

Amendment to section 62.

23. Section 62 of the Employment and Training Act is amended in sub-section (1) by omitting paragraph (a) and substituting therefor the following paragraph—

“(a) had made a claim against the employer under section 52A to 52D or under the Employment (Maternity and Health and Safety) Regulations 1995 whether such claim had been referred to the Industrial Tribunal or not;”.

New sections 65A, 65B and 65C.

24. The Employment and Training Act is amended by inserting after section 65 the following new sections—

“Dismissal in maternity cases.

65A. (1) For the purposes of sections 59 and 70 the dismissal of an employee by an employer shall be regarded as having been unfair if—

(a) the reason (or, if there is more than one, the principal reason) for her dismissal is that she is pregnant or any other reason connected with her pregnancy;

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- (b) her maternity leave period is ended by the dismissal and the reason (or, if there is more than one, the principal reason) for her dismissal is that she has given birth to a child or any other reason connected with her having given birth to a child;
- (c) the reason (or, if there is more than one, the principal reason) for her dismissal, where her contract of employment was terminated after the end of her maternity leave period, is that she took, or availed herself of the benefits or, maternity leave;
- (d) the reason (or, if there is more than one, the principal reason) for her dismissal, where—
 - (i) before the end of her maternity leave period, she gave to her employer a certificate from a registered medical practitioner stating that by reason of disease or bodily or mental disablement she would be incapable of work after the end of that period; and
 - (ii) her contract of employment was terminated within the four week period following the end of her maternity leave period in circumstances where she continued to be incapable to work and the certificate relating to her incapacity remained current,is that she has given birth to a child or any other reason connected with her having given birth to a child;
- (e) the reason (or, if there is more than one, the principal reason) for her dismissal is a requirement under any relevant statutory provision (as defined in section 6 of the Factories Act) having the consequence of requiring that the employee be suspended from work;
- (f) her maternity leave period is ended by the dismissal, and the reason (or, if there is more than one, the principal reason) for her dismissal is that she is redundant and regulation 9 of the Employment (Maternity and Health and Safety) Regulations 1995 has not been complied with.

(2) For the purposes of sub-section(1)(c) a woman “takes maternity leave” if she is absent from work during her maternity leave period and a woman “avails herself of the benefits of maternity leave” if, during her maternity leave period, she avails herself of the benefit of any of the terms and conditions of her employment preserved by regulation 3 of the Employment (Maternity and Health and Safety) Regulations 1996 during that period.

(3) Where an employee is dismissed during the period beginning with the date on which she notifies her employer that she is pregnant until the end of her maternity leave period, her employer shall cite duly substantiated grounds for her dismissal in writing.

(4) In this section, the expression “given birth” means delivered of a living child, or, after twenty-four weeks of pregnancy, a still born child

Dismissal in health and safety cases.

65B. (1) The dismissal of an employee by an employer shall be regarded for the purposes of sections 59 and 70 as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee—

- (a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, carried out, or proposed to carry out, any such activities;
- (b) being a representative of workers on matters of health and safety at work—
 - (i) in accordance with arrangements established under or by virtue of any law; or
 - (ii) by reason of being acknowledged as such by the employer, performed, or proposed to perform, any functions as such a representative;
- (c) being employee at a place where—
 - (i) there was no such representative; or
 - (ii) there was such a representative but it was not reasonably practicable for the employee to raise the matter by those means, brought to his employer’s attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety;
- (d) in circumstances of danger which he reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, left, or proposed to leave, or (while the danger persisted) refused to return to, his place of work or any dangerous part of his place of work; or

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- (e) in circumstances of danger which he reasonably believed to be serious and imminent, took, or proposed to take, appropriate steps to protect himself or other persons from the danger.

(2) For the purposes of sub-section (1)(e) whether steps which an employee took, or proposed to take, were appropriate shall be judged by reference to all the circumstances including, in particular, his knowledge and the facilities and advice available to him at the time.

(3) Where the reason (or, if more than one, the principal reason) for the dismissal of an employee was that specified in sub-section (1)(e), the dismissal shall not be regarded as having been unfair if the employer shows that it was, or would have been, so negligent for the employee to take the steps which he took, or proposed to take, that a reasonable employer might have dismissed him for taking, or proposing to take, them.

(4) In this section “representative” in relation to a worker means any person elected, chosen or designated in accordance with any law or practice to represent employees in matters relating to be safety and health protection of such workers at work.

Dismissal in relevant statutory right cases.

65C. (1) For the purposes of sections 59 and 70 the dismissal of an employee by an employer shall be regarded as having been unfair if the reason for it (or if more than one, the principal reason) was that the employee—

- (a) brought proceedings against the employer to enforce a right of his which is a relevant statutory right; or
- (b) alleged that the employer had infringed a right of his which is a relevant statutory right.

(2) It is immaterial for the purposes of sub-section (1) whether the employee has the right or not and whether it has been infringed or not, but, for that sub-section to apply, the claim to the right and that it has been infringed must be made in good faith.

(3) It shall be sufficient for sub-section (1) to apply that the employee, without specifying the right, made it reasonably clear to the employer what the right claimed to have been infringed was.

(4) For the purposes of this section any right conferred upon an employee by sections 65A and 65B and the Employment (Maternity and Health and Safety) Regulations 1995 is a relevant statutory right.”.

PART V
PARENTAL LEAVE

Entitlement to parental leave.

25. An employee who—

- (a) has been continuously employed for a period of at least a year; and
- (b) has, or expects to have, responsibility for a child,

is entitled, in accordance with this Part of these regulations, to be absent from work on unpaid parental leave for the purpose of caring for that child.

Extent of entitlement.

26.(1) An employee is entitled to four months' unpaid parental leave in respect of any individual child.

(2) An employee may not take more than four weeks' unpaid parental leave in any one year from the date of the child's birth, or adoption.

(3) In subregulation (1), a week's leave means seven days' absence from work, including weekends.

When parental leave may be taken.

27. An employee may not exercise any entitlement to parental leave in respect of a child—

- (a) except in the cases referred to in paragraphs (b) and (c), after the date of the child's fifth birthday;
- (b) in a case where the child was adopted by the employee, after the fifth anniversary of the date when the child was adopted;
- (c) in a case where the employee would have taken the leave before the date specified in paragraph (a) or (b) but for the fact that the employer postponed it, after the end of the period to which the leave was postponed.

Default provisions in respect of parental leave.

28. The provisions set out in Schedule 1 have effect in relation to parental leave in the case of an employee whose contract of employment does not include a provision which–

- (a) confers an entitlement to parental leave of at least a period of four months for the purpose of caring for a child; and
- (b) incorporates or operates by reference to a general agreement between all the employees of an employer on the methods by which parental leave may be taken.

Time off work for urgent family reasons.

29.(1) An employee may take up to five working days in each year as special unpaid leave for urgent family reasons such as sickness or accident affecting a member of the employee's immediate family which makes the immediate presence of the employee indispensable.

(2) In subregulation (1) "immediate family" means child under the age of eighteen, parent or spouse, and also includes a dependant of the employee who has no other means of support or assistance.

(3) An employee who takes special unpaid leave as described in subregulation (1) shall provide the employer with such proofs as the employer may reasonably require of the necessity for the leave.

Retention of employment rights.

30. An employee who takes parental leave under regulation 25 or special unpaid leave under regulation 29 shall retain the employment rights to which the employee is entitled as they would have been if the leave had not been taken and regulations 11, 13, and 17 shall apply *mutatis mutandis*.

Variation of working hours on return from parental leave.

31.(1) Subject to subregulation (2), where an employee has returned to work from parental leave he may in writing request from his employer changes to–

- (a) the hours he is required to work; or
- (b) the times he is required to work.

(2) The changes referred to in subregulation (1), if granted by the employer, shall be for a specified period only.

(3) An employer must consider all requests under this regulation taking into consideration both his own needs and that of the employee making the request and must respond in writing to the employee with the reasons for granting or refusing such request within 1 month from when the request was made.

(4) A request under this regulation must –

- (a) state it is such a request;
- (b) specify the change requested and the date on which it is proposed the change should become effective; and
- (c) explain what effect, if any, the employee thinks making the change requested would have on his employer and how, in his opinion, any such effect might be dealt with.

(5) If an employee has made a request under this regulation, he may not make a further request under this regulation to the same employer before the end of the period of twelve months beginning with the date on which the previous request was made.

Employer's duties in relation to a request under regulation 31.

32. An employer to whom a request under regulation 31 is made shall only refuse the request if he considers that –

- (a) allowing such a request would result in –
 - (i) a burden of additional costs on the employer;
 - (ii) a detrimental effect on the employer's ability to meet customer demand;
 - (iii) an inability to re-organise work among existing staff;
 - (iv) an inability to recruit additional staff;
 - (v) a detrimental impact on quality;
 - (vi) a detrimental impact on performance, or
- (b) the request cannot be granted due to –
 - (i) insufficiency of work during the periods the employee proposes to work;

- (ii) planned structural changes.

Complaints to the Employment Tribunal.

33.(1) An employee may present a complaint to the Employment Tribunal on the grounds that—

- (a) his employer has unreasonably postponed a period of parental leave requested by him;
- (b) his employer has prevented or attempted to prevent him from taking parental leave;
- (c) his employer has failed in relation to a request made under regulation 31 to comply with regulation 32;
- (d) a decision by his employer to reject a request under regulation 31 was based on incorrect facts.

(2) The Employment Tribunal shall not entertain a complaint under subregulation (1) unless it is presented to the tribunal before the end of the period of three months beginning with the date (or late date) of the matters complained of, 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 before the end of that period of three months.

(3) Where the Employment Tribunal finds a complaint under this regulation well-founded it may make an award of compensation to be paid by the employer to the employee.

(4) The amount of compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to the employer's behaviour and any loss sustained by the employee which is attributable to the matters complained of.

(5) No complaint under this regulation may be made in respect of a request which has been disposed of by agreement or withdrawn.

SCHEDULE 1

Regulation 28.

**DEFAULT PROVISIONS IN RESPECT
OF PARENTAL LEAVE**

1. An employee may not exercise any entitlement to parental leave unless—

- (a) he has complied with any request made by his employer to produce for the employer's inspection evidence of the entitlement, of the kind described in paragraph 2;
- (b) he has given his employer notice, in accordance with whichever of paragraphs 3-5 is applicable, of the period of leave he proposes to take, and
- (c) his employer has not postponed the period of leave in accordance with paragraph 6 below.

2. The evidence to be produced for the purpose of paragraph 1(a) is such evidence as may reasonably be required of—

- (a) an employee's responsibility or expected responsibility for the child in respect of whom the employee purposes to take parental leave, and
- (b) the age of that child.

3. Except in the cases referred to in paragraphs 4 and 5, the notice required for the purpose of paragraph 1(b) is notice which—

- (a) specifies the dates on which the period of leave is to begin and end, and
- (b) is given to the employer—
 - (i) where the period of leave is two weeks or less, at least four weeks before the date on which the period is to begin;
 - (ii) where the period of leave is more than two weeks, at least twice as many weeks before the date on which the period is to begin as there are weeks in the period, treating any fraction of a week as a whole week.

4. Where the employee is the father of the child in respect of whom the leave is to be taken, and the period of leave is to begin on the date on which the child is born, the notice required for the purpose of paragraph 1(b) is notice which—

- (a) specifies the expected week of childbirth and the duration of the period of leave, and
- (b) is given to the employer at least seven weeks before the beginning of the expected week of childbirth.

5. Where the child in respect of whom the leave is to be taken is adopted by the employee and the leave is to begin on the date of the adoption, the notice required for the purpose of paragraph 1(b) is notice which—

- (a) specifies the week in which the adoption is expected to occur and the duration of the period of leave, and
- (b) is given to the employer at least 7 weeks before the beginning of that week.

6. An employer may postpone a period of parental leave where—

- (a) paragraph 3 applies and the employee has given the employer the notice provided for in that paragraph;
- (b) the operation of the employer's business would be substantially prejudiced if the employee took leave during the period identified in his notice;
- (c) the employer agrees to permit the employee to take a period of leave—
 - (i) of the same length as the period identified in the employee's notice, and
 - (ii) beginning no later than six months after the date on which that period is to begin;
- (d) the employer gives the employee notice in writing of the postponement which—
 - (i) states the reason for it, and
 - (ii) specifies the dates on which the period of leave the employer agrees to permit the employee to take will begin and end; and
- (e) the notice is given to the employee—

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- (i) where the period of leave to which the employee's notice relates is two weeks or less, at least two weeks before the date specified in that notice as the date on which the period is to begin,
- (ii) where the period of leave to which the employee's notice relates is more than two weeks, at least as many weeks before the date specified in that notice as the date on which the period is to begin as there are weeks in the period, treating any fraction of a week as a whole week.

7. An employee may take parental leave in periods of less than a week, but each period of less than a week taken shall count as a week.