

1. Who do the new rights apply to?

The new rights apply to parents of children due on or after **5 April 2015**. Similar rights apply to adoptive parents, as well as to parents of a child born through a surrogacy arrangement. In this note, to make things simple, we set out the provisions as they apply to birth mothers and fathers.

2. Who can take shared parental leave?

Employees will be eligible to take shared parental leave in connection with the birth of a child if: (i) they are the child's mother or father or they are the partner of the child's mother; and (ii) both parents satisfy certain eligibility requirements. For example, in order for a mother to qualify for shared parental leave, she must be entitled to maternity leave and must have at least 26 weeks' service at the end of the 15th week before the child's due date and her partner must also have worked for at least 26 weeks in the 66 weeks prior to the due date and have average weekly earnings above a certain limit. "Partner" for these purposes means spouse, civil partner or someone living with the child's mother in an enduring family relationship who is not a relative.

3. How much shared parental leave can be taken?

The maximum amount of shared parental leave that is available for working parents to share is 50 weeks. The first two weeks post-birth (or four weeks in the case of factory workers) of a mother's maternity leave period cannot be shared. This is the compulsory maternity leave period and can only be taken by the mother. Ultimately the amount of leave which can be taken by each parent will depend on how much they decide to share between themselves.

4. When can shared parental leave be taken?

Parents will be able to take shared parental leave at the same time or consecutively, provided the total time taken does not exceed the amount jointly available to them. Shared parental leave cannot be taken until the mother's maternity leave period (or pay period, if the mother is not entitled to leave) has been brought to an end – either by the mother returning to work early or by her giving a "**Curtailment Notice**" to her employer in order to bring her leave (or pay) period to an end. Shared parental leave has to be taken in one-week blocks and must be taken within 52 weeks of the birth of the child.



5. What are the notification requirements?

As set out above, a mother must first bring her maternity leave (or pay) period to an end, either by returning to work early or by giving a Curtailment Notice to her employer to end her maternity leave (and pay) period on a specific date. At the same time, she must give her employer a notice of her entitlement and intention to take shared parental leave (an “**Entitlement Notice**”) or a written declaration stating that the father has given such a notice to his employer and that she has consented to the amount of leave that he intends to take. The Entitlement Notice must be served at least 8 weeks before the start date chosen for the first period of shared parental leave. To complicate matters further, the parent wishing to take a period of shared parental leave must then give their employer a separate notice setting out the start and end dates for each period of shared parental leave (a “**Period of Leave Notice**”). This notice must also be given at least 8 weeks before the start of the relevant period of leave. Employees can submit up to 3 Period of Leave Notices (and that includes any requests to vary a period of leave) under the statutory scheme.

6. Can employers reject requests to take shared parental leave?

If an employee requests one continuous period of shared parental leave, this must be granted by the employer. If, however, the employee requests so-called “discontinuous” periods of leave (i.e. separate periods of leave to be taken at different times), the employer may, within 2 weeks of the date on which the notice was given, agree to the request, propose alternative dates or refuse the periods of leave requested. In other words, employers do not have to agree to discontinuous periods of leave. If an employer refuses the request and the parties are unable to reach agreement on alternative dates, the employee is entitled to take the total amount of leave requested in the notice as one continuous period of leave, unless s/he chooses to withdraw the request.

7. Work during shared parental leave

Parents will be entitled to take up to 20 KIT-style days each to use whilst on shared parental leave without bringing it to an end. These days can be used for work, events or other work-related activities. These are in addition to the existing 10 KIT days available on maternity leave.

8. Terms and conditions during shared parental leave

During any period of shared parental leave, employees will be entitled to the benefit of all their terms and conditions of employment which would have applied if they had not been absent from work, with the exception of any terms and conditions about remuneration, i.e. wages and salary. Equally, they will also remain bound by any obligations arising from those terms and conditions of employment, save to the extent they are inconsistent with their right to be absent from work.

9. Returning to work after shared parental leave

Employees’ rights on returning to work after a period of shared parental leave will depend on the amount of shared parental leave they have taken, together with any other period of “relevant statutory leave” (e.g. maternity, adoption or paternity leave). Broadly speaking, if an employee returns to work having taken statutory leave of 26 weeks or less, they will be entitled to return to their old job. If, however, they have taken more leave than this, they will be entitled to return to their old job or, if this is not reasonably practicable, to another job which is both suitable for the employee and appropriate for them to do in the circumstances.

10. Who is entitled to statutory shared parental pay?

There are slightly different eligibility criteria for statutory shared parental pay (ShPP). Mothers, fathers, and the partners of mothers who are employed earners will be entitled to receive ShPP, provided they satisfy certain eligibility conditions as to continuity of service and normal weekly earnings and comply with the notification and evidential requirements. Again, similar rights apply to adopters and parents of a child born through a surrogacy arrangement. ShPP is available for a maximum period of 37 weeks – the first two weeks post-birth (or four weeks for factory workers) of the mother’s maternity pay period cannot be shared. ShPP will be payable at a flat weekly rate or 90% of the employee’s average weekly earnings, if lower.

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