

Carer's Leave Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Business, Energy & Industrial Strategy with the consent of Wendy Chamberlain, the member in charge of the Bill, are published separately as Bill 23-EN.

Carer's Leave Bill

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TO

Make provision about unpaid leave for employees with caring responsibilities.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Carer's leave

In the Schedule—

- (a) Part 1 creates a statutory entitlement to carer's leave, and
- (b) Part 2 contains related amendments.

2 Power to make consequential provision

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- (1) The Secretary of State may by regulations make provision that is consequential on this Act.
- (2) The regulations are to be made by statutory instrument.
- (3) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

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3 Extent, commencement and short title

- (1) An amendment or repeal made by the Schedule has the same extent as the provision to which it relates.
- (2) Otherwise, this Act extends to England and Wales, Scotland and Northern Ireland.
- (3) Section 1, section 2 and the Schedule come into force on such day as the Secretary of State may by regulations made by statutory instrument appoint; and different days may be appointed for different purposes.
- (4) This section comes into force on the day on which this Act is passed.
- (5) This Act may be cited as the Carer's Leave Act 2022.

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SCHEDULE

Section 1

CARER'S LEAVE

PART 1

CARER'S LEAVE

- 1 The Employment Rights Act 1996 is amended as follows. 5
- 2 After section 80I insert –

“PART 8B

CARER'S LEAVE

80J Carer's leave

- (1) The Secretary of State must make regulations entitling an employee to be absent from work on leave under this section in order to provide or arrange care for a dependant with a long-term care need. 10
- (2) For the purposes of subsection (1) –
- (a) a person is a dependant of an employee if they –
- (i) are a spouse, civil partner, child or parent of the employee, 15
- (ii) live in the same household as the employee, otherwise than by reason of being the employee's boarder, employee, lodger or tenant, or
- (iii) reasonably rely on the employee to provide or arrange care, and 20
- (b) a dependant of an employee has a “long-term care need” if –
- (i) they have an illness or injury (whether physical or mental) that requires, or is likely to require, care for more than three months, 25
- (ii) they have a disability for the purposes of the Equality Act 2010, or
- (iii) they require care for a reason connected with their old age.
- (3) The regulations must include provision for determining – 30
- (a) the extent of an employee's entitlement to leave under this section;
- (b) when leave under this section may be taken.
- (4) Provision under subsection (3)(a) must secure that where an employee is entitled to leave under this section the employee is entitled to at least a week's leave during any period of 12 months. 35

- (5) The regulations may make provision about how leave under this section is to be taken (including by providing for it to be taken non-continuously).
- (6) The regulations may provide that particular activities are, or are not, to be treated as providing or arranging care for the purposes of this Part. 5

80K Rights during and after carer's leave

- (1) Regulations under section 80J must provide—
 - (a) that an employee who is absent on leave under that section is entitled, for such purposes and to such extent as the regulations may prescribe, to the benefit of the terms and conditions of employment which would have applied but for the absence, 10
 - (b) that an employee who is absent on leave under that section is bound, for such purposes and to such extent as the regulations may prescribe, by obligations arising under those terms and conditions (except in so far as they are inconsistent with subsection (1) of that section), and 15
 - (c) that an employee who is absent on leave under that section is entitled to return from leave to a job of a kind prescribed by regulations, subject to section 80L. 20
- (2) Regulations under section 80J may provide that where provision made by or under Part 8 provides for a reference to absence on leave under a section of that Part to include a reference to a continuous period of absence attributable — 25
 - (a) partly to leave under that section of Part 8, and
 - (b) partly to leave under another section of that Part,absence attributable to leave under section 80J is to be ignored in any determination of the continuity or duration of such a period.
- (3) In subsection (1)(a), “terms and conditions of employment” — 30
 - (a) includes matters connected with an employee's employment whether or not they arise under the contract of employment, but
 - (b) does not include terms and conditions about remuneration.
- (4) Regulations under section 80J may specify matters which are, or are not, to be treated as remuneration for the purposes of this section. 35
- (5) Regulations under section 80J may make provision, in relation to the right to return mentioned in subsection (1)(c), about —
 - (a) seniority, pension rights and similar rights;
 - (b) terms and conditions of employment on return. 40

80L Special cases

- (1) Regulations under section 80J may make provision about —
 - (a) redundancy during or after a period of leave under that section;
 - (b) dismissal (other than by reason of redundancy) during a period of leave under that section. 45

- (2) Provision by virtue of subsection (1) may include provision for the consequences of failure to comply with the regulations (which may include provision for a dismissal to be treated as unfair for the purposes of Part 10).

80M Part 8B: supplemental

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- (1) Regulations under section 80J may –
- (a) make provision about notices to be given and other procedures to be followed by employees and employers;
 - (b) make provision requiring employers or employees to keep records; 10
 - (c) make provision for the consequences of failure to give notices, to keep records or to comply with other procedural requirements;
 - (d) make provision for the consequences of failure to act in accordance with a notice given by virtue of paragraph (a); 15
 - (e) make provision about the postponement by an employer of a period of leave under section 80J;
 - (f) make special provision for cases where an employee has a right which corresponds to a right under section 80J and which arises under the person's contract of employment or otherwise; 20
 - (g) make provision modifying the effect of Chapter 2 of Part 14 (calculation of a week's pay) in relation to an employee who is or has been absent from work on leave under section 80J;
 - (h) make provision applying, modifying or excluding an enactment, in such circumstances as may be specified and subject to any conditions which may be specified, in relation to a person entitled to take leave under section 80J; 25
 - (i) make different provision for different cases or circumstances;
 - (j) make consequential provision. 30
- (2) Provision under subsection (1)(a) may, in particular, provide that an employer cannot require an employee to supply evidence in relation to a request for leave under section 80J before granting that leave.
- (3) Provision under subsection (1)(i) may, in particular, provide for the meaning of "a week's leave" in section 80J(4) to be determined by reference to the number of days normally worked, or required to be worked, by an employee in a particular period. 35
- (4) The cases or circumstances mentioned in subsection (1)(i) include an employee providing or arranging care for more than one dependant during any period of 12 months; and regulations may, in particular, make special provision regarding the applicability and extent of the entitlement to leave in such circumstances. 40

80N Complaint to employment tribunal

- (1) An employee may complain to an employment tribunal that their employer – 45
- (a) has unreasonably postponed a period of carer's leave, or
 - (b) has prevented or attempted to prevent the employee from taking carer's leave.

- (2) The tribunal must not consider the complaint unless it is made –
- (a) before the end of the period of three months beginning with the date (or last date) of the matter complained of, or
 - (b) 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 made before the end of that period of three months. 5
- (3) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2)(a). 10
- (4) The tribunal, if satisfied that an employer has acted as described in subsection (1)(a) or (b) –
- (a) must make a declaration to that effect, and
 - (b) may award compensation to be paid by the employer to the employee. 15
- (5) The amount of any compensation must be the amount the tribunal considers just and equitable in all the circumstances, including –
- (a) the employer's behaviour, and
 - (b) any consequential loss sustained by the employee.”
- 3 In section 236(3) (orders and regulations subject to affirmative procedure), after “80G,” insert “80J,” 20

PART 2

FURTHER AMENDMENTS TO DO WITH CARER'S LEAVE

Employment Rights Act 1996

- 4 The Employment Rights Act 1996 is amended as follows. 25
- 5 In section 47C (leave for family and domestic reasons), in subsection (2), after paragraph (bb) insert –
- “(bc) carer's leave,”.
- 6 In section 88 (liability of employer to pay employee during period of notice: employments with normal working hours), in subsection (1)(c), after “shared parental leave,” insert “carer's leave,”. 30
- 7 In section 89 (effect of notice of termination: employments without normal working hours), in subsection (3)(b), after “shared parental leave,” insert “carer's leave,”.
- 8 In section 99 (leave for family reasons), in subsection (3), after paragraph (bb) insert –
- “(bc) carer's leave,”.
- 9 In section 191 (Crown employment), in subsection (2)(c), for “8A,” substitute “8B,”.
- 10 In section 192 (armed forces), in subsection (2), after paragraph (c) insert –
- “(ca) Part 8B,”.
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|----------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| 11 | In section 194 (House of Lords staff), in subsection (2)(e), for “6A, 7, 8 and 8A” substitute “6A to 8B”. | |
| 12 | In section 195 (House of Commons staff), in subsection (2)(e), for “6A, 7, 8 and 8A” substitute “6A to 8B”. | |
| 13 | In section 199 (mariners) –
(a) in subsection (2), for “6A, 7, 8 and 8A” substitute “6A to 8B”;
(b) in subsection (8)(d), for “6A, 7, 8 and 8A” substitute “6A to 8B”. | 5 |
| 14 | In section 202 (national security), in subsection (2), after paragraph (e) insert –
“(ea) Part 8B,”. | 10 |
| 15 | In section 205 (remedy for infringement of certain rights), in subsection (1), after “VIII,” insert “Part 8B,”. | |
| 16 | In section 206 (institution or continuance of tribunal proceedings), in subsection (2), after paragraph (e) insert –
“(ea) Part 8B,”. | 15 |
| 17 | In section 235 (definitions), in subsection (1) –
(a) at the appropriate place insert –
““carer’s leave” means leave under section 80J,”;
(b) in the definition of “week”, in paragraph (b), before “and 86” insert “, 80J”. | 20 |
| <i>Income Tax (Earnings and Pensions) Act 2003</i> | | |
| 18 | In Schedule 5 to the Income Tax (Earnings and Pensions) Act 2003 (enterprise management incentives), in paragraph 26(3)(b), after “shared parental leave,” insert “, carer’s leave,”. | |

Carer's Leave Bill

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To make provision about unpaid leave for employees with caring responsibilities.

Presented by Wendy Chamberlain.

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to be Printed, 15th June 2022.*

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