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Make provision for a statutory right to an employment retention assessment to determine entitlement to a period of rehabilitation leave for newly disabled people and people whose existing impairments change; and for connected purposes.

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 Employment retention

- (1) The Employment Rights Act 1996 (c. 18) is amended as follows.
- (2) After Part 8A there is inserted—

“PART 8B

EMPLOYMENT RETENTION

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80J Employment retention assessment

- (1) The Secretary of State shall make regulations—
 - (a) entitling a disabled employee who satisfies specified conditions to an employment retention assessment;
 - (b) prescribing the nature of the employment retention assessment. 10
- (2) This assessment must be carried out by a health care professional approved by the Secretary of State.

80K Entitlement to rehabilitation leave

- (1) The Secretary of State shall make regulations specifying the conditions under which a disabled employee, who has been assessed under section 80J, may be absent from work on rehabilitation leave under this section for the purposes of—
 - (a) rehabilitation;
 - (b) re-training; and 15

- (c) enabling his employer to make reasonable adjustments to working conditions and arrangements.
- (2) Regulations under subsection (1) shall include provision for determining—
- (a) the extent of a disabled employee's entitlement to leave under this section; and
 - (b) when leave under this section may be taken.
- 80L Rights during and after rehabilitation leave** 5
- An employee who is absent from work during a period of rehabilitation leave under section 80K— 10
- (a) is entitled, for such purposes and to such extent as may be prescribed, to the benefits of the terms and conditions which would have been applied, if he had not been absent;
 - (b) is bound, for such purposes and to such extent as may be prescribed, by obligations arising under those terms and conditions (except in so far as they are inconsistent with section 80K); and
 - (c) is entitled to return from leave to a job of a kind prescribed by regulations. 15
- 80M Complaint to employment tribunal** 20
- (1) A disabled employee may present a complaint to an employment tribunal that his employer—
- (a) has unreasonably postponed a period of rehabilitation leave requested by the employee; or
 - (b) has prevented or attempted to prevent the employee from taking rehabilitation leave. 25
- (2) An employment tribunal shall not consider a complaint under this section unless it is presented—
- (a) before the end of the period of three months beginning with the date (or last date) of the matters 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 presented before the end of that period of three months. 30
- (3) Where an employment tribunal finds a complaint under this section well founded it— 35
- (a) shall make a declaration to that effect; and
 - (b) 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— 40
- (a) the employer's behaviour; and
 - (b) any loss sustained by the employee which is attributable to the matters complained of.
- 80N Interpretation** 45
- For the purposes of this Part—

“disabled employee” means an employee who has a disability, as defined in section 1(1) of the Disability Discrimination Act 1995 (c. 50);

“employment retention assessment” has the same meaning as “work-focused health-related assessment” in the Welfare Reform Act 2007 (c. 5);

“health care professional” has the same meaning as in the Welfare Reform Act 2007.”

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(3) In section 236(3), after “80G,” insert “80J(1), 80K”.

2 Short title and commencement

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(1) This Act may be cited as the Employment Retention Act 2008.

(2) This Act (apart from this section) comes into force on such day as the Secretary of State may appoint by order made by statutory instrument, and different days may be appointed for different provisions or for different purposes.

(3) An order under subsection (2) may contain transitional provisions and savings relating to the provisions being brought into force by the order.

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Employment Retention Bill

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*Ordered to be brought in by John Robertson,
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to be Printed, 29th January 2008.*

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