Draft Regulations laid before Parliament under section 236(3) of the Employment Rights Act 1996, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No. XXXX

TERMS AND CONDITIONS OF EMPLOYMENT

The Shared Parental Leave Regulations 2014

Made - - - -	*****
Coming into force - -	*1st December 2014*

A draft of these Regulations was laid before Parliament in accordance with section 236(3) of the Employment Rights Act 1996(**1**) and approved by a resolution of each House of Parliament.

The Secretary of State, in exercise of the powers conferred by sections 47C(2), 75E, 75F(1), (4), (7) to (14), and (16), 75G(1) to (6), 75H(1), (4), (7) to (14), and (16), 75I(1), (4), and (5), 75J, 75K(1) and (6), and 99 of the Employment Rights Act 1996(**2**), makes the following Regulations.

PART 1

GENERAL

Citation and commencement

1. These Regulations may be cited as the Shared Parental Leave Regulations 2014 and come into force on 1st December 2014.

Application

2.—(1) The provisions relating to shared parental leave in Part 2 have effect only in relation to children whose expected week of birth begins on or after 5th April 2015.

(2) The provisions relating to shared parental leave in Part 3 have effect only in relation to children placed for adoption on or after 5th April 2015.

(**1**) 1996 c. 18. Section 236(3) was amended by the Children and Families Act 2014 (c. 6), section 117(2); there are other amending instruments but none is relevant.

(**2**) Section 47C was inserted by the Employment Relations Act 1999 (c. 26), Schedule 4, Part 3, paragraphs 5 and 8, and amended by the Children and Families Act 2014, Schedule 7, paragraphs 29 and 31; there are other amending instruments but none is relevant. Sections 75E to 75K were inserted by the Children and Families Act 2014, section 117(1). 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.

(3) Regulation 42 (protection from detriment) has effect only in relation to an act or failure to act which takes place on or after 1st December 2014.

(4) Regulation 43 (unfair dismissal) has effect only in relation to dismissals where the effective date of termination (within the meaning of section 97 of the 1996 Act(**3**)) falls on or after 1st December 2014.

Interpretation

3.—(1) In these Regulations—

"1992 Act" means the Social Security Contributions and Benefits Act 1992(**4**);

"1996 Act" means the Employment Rights Act 1996;

"A", in relation to C, means the person with whom C is, or is expected to be, placed for adoption, or, in a case where two people have been matched jointly, whichever of them has elected to be the child's adopter for the purposes of the Paternity and Adoption Leave Regulations 2002(**5**);

"adoption agency" has the meaning given, in relation to England and Wales, by section 2(1) of the Adoption and Children Act 2002(**6**) and, in relation to Scotland, by section 119(1) of the Adoption and Children (Scotland) Act 2007(**7**);

"adoption pay period" means the period in which statutory adoption pay may be payable in respect of C;

"allowance curtailment date" means the last day of M's maternity allowance period where that period has been reduced under section 35(3A) of the 1992 Act(**8**);

"AP" means the person who at the date that C is placed for adoption is married to, or the civil partner or the partner of, A;

"C" means the child in relation to whom an entitlement to shared parental leave arises;

"expected week of birth" means the week, beginning with midnight between Saturday and Sunday, in which it is expected that C will be born;

"leave curtailment date" means—

(a) in Part 2, the last day of M's statutory maternity leave period where that period has been curtailed under section 71(3)(ba) or 73(3)(a) of the 1996 Act(**9**);

(b) in Part 3, the last day of A's statutory adoption leave period where that period has been curtailed under section 75A(2A)(a) or 75B(3)(aa) of the 1996 Act(**10**);

"M" means the mother (or expectant mother) of C;

"maternity allowance" means a maternity allowance under section 35(1) of the 1992 Act(**11**);

"maternity allowance period" means the period referred to in section 35(2) of the 1992 Act(**12**);

(**3**) Section 97 was amended by the Employment Relations Act 1999, Schedule 9, paragraph 2, and S.I. 2002/2034.
(**4**) 1992 c. 4.
(**5**) S.I. 2002/2788; election is dealt with in regulation 2(4)(c) of those Regulations.
(**6**) 2002 c. 38.
(**7**) 2007 asp 4.
(**8**) Section 35(3A) was inserted by the Children and Families Act 2014, section 120(2).
(**9**) Section 71(3)(ba) and section 73(3)(a) were inserted by the Children and Families Act 2014, section 118(2) and (3) (respectively).
(**10**) Sections 75A and 75B were inserted by the Employment Act 2002 (c. 22), section 3. Section 75(2A) was inserted by the Work and Families Act 2006 (c. 18), Schedule 1, paragraph 22. Section 75A(2A)(a) and section 75B(3)(aa) were inserted by the Children and Families Act 2014, section 118(4) and (5) (respectively).
(**11**) Section 35(1) was substituted by the Welfare Reform and Pensions Act 1999 (c. 30), section 53(1), and amended by the Employment Act 2002, Schedule 7, paragraph 4(2), and S.I. 2014/606.
(**12**) Section 35(2) was amended by S.I. 2014/606.

"maternity pay period" has the meaning given by regulation 2 of the Statutory Maternity Pay (General) Regulations 1986(**13**);

"P" means the father of C, or the person who at the date of C's birth is married to, or the civil partner or the partner of, M;

"partner" in relation to M or A, means a person (whether of a different sex or the same sex) who lives with M or A and with C in an enduring family relationship but is not M's or A's child, parent, grandchild, grandparent, sibling, aunt, uncle, niece or nephew;

"pay curtailment date" means—

(a) in Part 2, the last day of M's maternity pay period where that period has been reduced under section 165(3A) of the 1992 Act(**14**);

(b) in Part 3, the last day of A's adoption pay period where that period has been reduced under section 171ZN(2A)(**15**);

"period of leave notice" means a notice given in accordance with regulation 12 or 28;

"placed for adoption" means—

(a) placed for adoption under the Adoption and Children Act 2002 or the Adoption and Children (Scotland) Act 2007; or

(b) placed in accordance with section 22C of the Children Act 1989(**16**) with a local authority foster parent who is also a prospective adopter;

"processing", in relation to information, has the meaning given by section 1(1) of the Data Protection Act 1998(**17**);

"returned after being placed for adoption" means—

(a) returned under sections 31 to 35 of the Adoption and Children Act 2002,

(b) in Scotland, returned to the adoption agency, adoption society or nominated person in accordance with section 25(6) of the Adoption and Children (Scotland) Act 2007, or

(c) where the child is placed in accordance with section 22C of the Children Act 1989, returned to the adoption agency following a termination of the placement;

"revocation notice" means a notice given under section 71(3)(bb), 73(3)(aa), 75A(2A)(b), or 75B(3)(aa) of the 1996 Act(**18**) or section 35(3D), 165(3D), or 171ZN(2D) of the 1992 Act(**19**), as the case may be, which revokes a notice previously given under that section;

"shared parental leave" means leave under section 75E or 75G of the 1996 Act;

"statutory adoption leave" means ordinary adoption leave under section 75A of the 1996 Act or additional adoption leave under section 75B of that Act;

"statutory adoption pay" has the meaning given in section 171ZL of the 1992 Act(**20**);

"statutory maternity leave" means ordinary maternity leave under section 71 of the 1996 Act or additional maternity leave under section 73 of that Act(**21**);

(**13**) S.I. 1986/1960; regulation 2 was substituted by S.I. 2006/2379.
(**14**) Section 165(3A) was inserted by the Children and Families Act 2014, section 120(4).
(**15**) Section 171ZN was inserted by the Employment Act 2002, section 4. Section 171ZN(2A) was inserted by the Children and Families Act 2014, section 120(6).
(**16**) 1989 c. 41. Section 22C was inserted by the Children and Young Persons Act 2008 (c. 23), section 8(1), and subsection (9B)(c) was inserted by the Children and Families Act 2014, section 2.
(**17**) 1998 c. 29; section 1 was amended by the Freedom of Information Act 2000 (c. 36), section 68(2)(a), and Schedule 8, paragraph 1.
(**18**) Sections 71(3)(bb), 73(3)(aa), 75A(2A)(b) and 75B(3)(aa) were inserted by the Children and Families Act 2014, section 118.
(**19**) Sections 35(3D), 165(3D) and 171ZN(2D) were inserted by the Children and Families Act 2014, section 120.
(**20**) Section 171ZL was inserted by the Employment Act 2002, section 4, and amended by S.I. 2006/2012, 2011/1740.
(**21**) Sections 71 and 73 were substituted by the Employment Relations Act 1999, Schedule 4, Part 1, and amended by the Employment Act 2002, section 17, and by the Work and Families Act 2006, Schedule 1, paragraphs 31 and 32 (respectively).

"statutory maternity pay" has the meaning given in section 164(1) of the 1992 Act; and

"statutory shared parental pay" means any pay payable in accordance with the provisions of Part 12ZC of the 1992 Act(**22**).

(2) References to relationships in the definition of "partner" in paragraph (1)—

(a) are to relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would exist but for the adoption, and

(b) include the relationship of a child with adoptive, or former adoptive, parents, but do not include other adoptive relationships.

(3) For the purposes of these Regulations—

(a) a person is matched with a child for adoption when an adoption agency decides that that person would be a suitable adoptive parent for the child either individually or jointly with another person;

(b) in a case where sub-paragraph (a) applies, a person is notified of having been matched with a child on the date on which the person receives notification of the agency's decision, under regulation 33(3)(a) of the Adoption Agencies Regulations 2005(**23**), regulation 28(3) of the Adoption Agencies (Wales) Regulations 2005(**24**), or regulation 8(5) of the Adoption Agencies (Scotland) Regulations 2009(**25**);

(c) a person is also matched with a child for adoption when a decision has been made in accordance with regulation 22A of the Care Planning, Placement and Case Review (England) Regulations 2010(**26**) and an adoption agency has identified that person with whom the child is to be placed in accordance with regulation 12B of the Adoption Agencies Regulations 2005(**27**);

(d) in a case where paragraph (c) applies, a person is notified of having been matched with a child on the date on which that person receives notification in accordance with regulation 12B(2)(a) of the Adoption Agencies Regulations 2005 of the decision to place for adoption the child with that person.

(4) The reference to "local authority foster parent" in the definition of "placed for adoption" in paragraph (1) means a person approved as a local authority foster parent in accordance with regulations made by virtue of paragraph 12F of Schedule 2 to the Children Act 1989(**28**).

(5) The reference to "prospective adopter" in the definition of "placed for adoption" in paragraph (1) means a person who has been approved as suitable to adopt a child and has been notified of that decision in accordance with regulation 30B(4) of the Adoption Agencies Regulations 2005(**29**).

(**22**) Part 12ZC was inserted by the Children and Families Act 2014, section 119.
(**23**) S.I. 2005/389.
(**24**) S.I. 2005/1313.
(**25**) S.S.I. 2009/154.
(**26**) S.I. 2010/959; amended by S.I. 2014/1556; there is another amending instrument but it is not relevant.
(**27**) Regulation 12B was inserted by S.I. 2014/1556.
(**28**) Paragraph 12F was inserted by the Children and Young Persons Act 2008, Schedule 1, paragraph 4.
(**29**) Regulation 30B was inserted by S.I. 2013/985.

PART 2

ENTITLEMENT TO SHARED PARENTAL LEAVE (BIRTH)

CHAPTER 1

Entitlement to leave – general

Mother's entitlement to shared parental leave

4.—(1) M is entitled to be absent from work to take shared parental leave in accordance with Chapter 2 to care for C if she satisfies the conditions specified in paragraph (2) and P satisfies the conditions specified in paragraph (3).

(2) The conditions are that—

(a) M satisfies the continuity of employment test (see regulation 35);

(b) M has, at the date of C's birth, the main responsibility for the care of C (apart from the responsibility of P);

(c) M is entitled to statutory maternity leave in respect of C;

(d) M has ended any entitlement to statutory maternity leave by curtailing that leave under section 71(3)(ba) or 73(3)(a) of the 1996 Act (and that leave remains curtailed) or, where M has not curtailed in that way, M has returned to work before the end of her statutory maternity leave;

(e) M has complied with regulation 8 (notice to employer of entitlement to shared parental leave);

(f) M has complied with regulation 10(3) to (5) (evidence for employer); and

(g) M has given a period of leave notice in accordance with regulation 12.

(3) The conditions are that—

(a) P satisfies the employment and earnings test (see regulation 36); and

(b) P has, at the date of C's birth, the main responsibility for the care of C (apart from the responsibility of M).

(4) Entitlement under paragraph (1) is not affected by the number of children born or expected as a result of the same pregnancy.

Father's or partner's entitlement to shared parental leave

5.—(1) P is entitled to be absent from work to take shared parental leave in accordance with Chapter 2 to care for C if P satisfies the conditions specified in paragraph (2) and M satisfies the conditions specified in paragraph (3).

(2) The conditions are that—

(a) P satisfies the continuity of employment test (see regulation 35);

(b) P has, at the date of C's birth, the main responsibility for the care of C (apart from the responsibility of M);

(c) P has complied with regulation 9 (notice to employer of entitlement to shared parental leave);

(d) P has complied with regulation 10(3) to (5) (evidence for employer); and

(e) P has given a period of leave notice in accordance with regulation 12.

(3) The conditions are that—