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 Maternity and Adoption Leave (Curtailment of Statutory Rights to 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 resolution of each House of Parliament.

The Secretary of State, in exercise of the powers conferred by sections 71(2), (3)(ba) and (bb) and (3A), 73(2), (3)(a) and (aa) and (3A), 75(1)(a) and (2), 75A(1A), (2), (2A) and (2B), 75B(2), (3)(a) and (aa) and (3A) and 75D(1)(a) and (2) 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 Maternity and Adoption Leave (Curtailment of Statutory Rights to Leave) Regulations 2014 and come into force on 1st December 2014.

Application

2.—(1) Part 2 of these Regulations has effect only in relation to children whose expected week of birth begins on or after 5th April 2015.

(**1**) 1996 c.18.

(**2**) Subsections 71(3)(ba) and (bb) and (3A) were inserted by section 118(2) of the Children and Families Act 2014 (c.6). Subsection (3)(a) of section 73 was amended by and subsections (3)(aa) and (3A) of that section were inserted by section 118(3) of the Children and Families Act 2014. Sections 75A, 75B and 75D were inserted by the Employment Act 2002 (c. 22), section 3. Subsection (1A) of section 75A was inserted by 121(1) of the Children and Families Act 2014. Subsection (2A) was inserted by the Work and Families Act 2006, Schedule 1, paragraph 33. Subsection (2A) of section 75A was amended by and subsection (2B) was inserted by section 118(4) of the Children and Families Act 2014. Subsection (3)(a) of section 75B was amended by and subsections (3)(aa) and (3A) were inserted by section 118(5) of the Children and Families Act 2014.

(2) Part 3 of these Regulations has effect only in relation to children placed for adoption on or after 5th April 2015.

Interpretation

3.—(1) In these Regulations—

"the 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 the case where two people have been matched jointly, whichever of them has elected to be C's adopter for the purposes of the Paternity and Adoption Leave Regulations 2002(**3**);

"AP" means the person who is married to or is the civil partner or the partner of A;

"C" means—

(a) in Part 2 of the Regulations, the child in relation to whom M has an entitlement to statutory maternity leave;

(b) in Part 3 of the Regulations, the child in relation to whom A has an entitlement to statutory adoption leave;

"declaration of consent and entitlement" means—

(a) in Part 2 of the Regulations, a written declaration signed by M stating that—

(i) P has given a notice to his employer in accordance with regulations made under section 75E(4)(d) of the 1996 Act(**4**); and

(ii) M has consented to the amount of leave that P intends to take in accordance with regulations made under section 75E(4)(e) of the 1996 Act;

(b) in Part 3 of the Regulations, a written declaration by A stating that—

(i) AP has given notice to AP's employer in accordance with regulations made under section 75G(4)(d) of the 1996 Act(**5**); and

(ii) AP has consented to the amount of leave that AP intends to take in accordance with regulations made under section 75G(4)(e) of the 1996 Act;

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

"leave curtailment date" means the date specified in a leave curtailment notice;

"leave curtailment notice" means—

(a) in Part 2, a notice which complies with the requirements of regulation 6;

(b) in Part 3, a notice which complies with the requirements of regulation 10;

"local authority foster parent" 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(**6**)";

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

"notice of entitlement" means—

(a) in Part 2 of the Regulations, a notice given by M in accordance with regulations made under section 75E(1)(f) of the 1996 Act;

(**3**) S.I. 2002/2788; election is dealt with in regulation 2(4)(c) of these Regulations.
(**4**) Section 75E was inserted by the Children and Families Act 2014, section 117(1).
(**5**) Section 75G was inserted by the Children and Families Act 2014, section 117(1).
(**6**) Paragraph 12F was inserted by the Children and Young Persons Act 2008 (c.23), section 8(1), Schedule 1, paragraph 4.

(b) in Part 3 of the Regulations, a notice given by A in accordance with regulations made under section 75G(1)(f) of the 1996 Act;

"P" means the father of C, or the person who is married to, or is the civil partner or 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 or A's child, parent, grandchild, grandparent, sibling, aunt, uncle, niece or nephew;

"placed for adoption" means—

(a) placed for adoption under the Adoption and Children Act 2002(**7**) or the Adoption and Children (Scotland) Act 2007(**8**); or

(b) placed in accordance with section 22C of the Children Act 1989(**9**) with a local authority foster parent who is also a prospective adopter;

"prospective adopter" 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(**10**);

"revocation notice"—

(a) in Part 2, is a notice which complies with the requirements of regulation 8(3);

(b) in Part 3, is a notice which complies with the requirements of regulation 12(2);

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

"shared parental pay" means shared parental pay payable in accordance with the provisions of Part 12ZC of the Social Security Contributions and Benefits Act 1992(**11**);

"statutory adoption leave" means leave under section 75A of the 1996 Act (ordinary adoption leave) and leave under section 75B of the 1996 Act (additional adoption leave);

"statutory maternity leave" means leave under section 71 of the 1996 Act (ordinary maternity leave) and leave under section 73 of the 1996 Act (additional maternity leave);

"week" means any period of seven consecutive days.

(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 his adoptive, or former adoptive, parents but do not include other adoptive relationships.

(3) For the purposes of these Regulations a person is matched with a child for adoption when—

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

(b) a decision has been made in accordance with regulation 22A of the Care Planning, Placement and Case Review (England) Regulations 2010(**12**) and an adoption agency has identified that person as the person with whom the child is to be placed in accordance with regulation 12B of the Adoption Agencies Regulations 2005.

(**7**) 2002 c.38.
(**8**) asp 4 2007.
(**9**) 1989 c.41; section 22C was inserted by the Children and Young Persons Act 2008, section 8(1) and was amended by the Children and Families Act 2014, section 2.
(**10**) S.I. 2005/389; regulations 12B was inserted by S.I. 2014/1556, regulation 5.
(**11**) 1992 c. 4; Part 12ZC was inserted by section 119(1) of the Children and Families Act 2014 (c.6).
(**12**) S.I. 2010/959; amended by S.I. 2014/1556.

Notices

4.—(1) Where a notice is to be given under these Regulations, it may be given—

(a) where paragraph (2) applies, by electronic communication;

(b) by post; or

(c) by personal delivery.

(2) This paragraph applies where the person who is to receive the notice has agreed that the notice may be given to the person by being transmitted to an electronic address and in an electronic form specified by the person for the purpose.

(3) Where a notice is to be given under these Regulations it is to be taken to have been given—

(a) if sent by electronic communication, on the day of transmission;

(b) if sent by post in an envelope which is properly addressed and sent by prepaid post, on the day on which it is posted;

(c) if delivered personally, on the day of delivery.

PART 2

CURTAILMENT OF STATUTORY MATERNITY LEAVE

Entitlement to curtail statutory maternity leave

5.—(1) M may bring forward the date on which her ordinary maternity leave period(**13**) or additional maternity leave period(**14**) ends by giving her employer a leave curtailment notice and either—

(a) a notice of entitlement; or

(b) a declaration of consent and entitlement.

(2) M must give her employer her leave curtailment notice at the same time as she gives her employer either a notice of entitlement or a declaration of consent and entitlement.

(3) If M has an entitlement to statutory maternity leave with more than one employer in relation to C, she must curtail her ordinary maternity leave period or additional maternity leave period in accordance with paragraphs (1) and (2) with each of those employers at the same time.

(4) M's obligation in paragraph (3) does not apply in relation to any employer with which she has returned to work on or before the date on which she gives notices in accordance with paragraphs (1) and (2).

Leave curtailment notice

6.—(1) A leave curtailment notice must be in writing and must state—

(a) where M curtails her ordinary maternity leave period, the date on which M's ordinary maternity leave period is to end;

(b) where M curtails her additional maternity leave period, the date on which M's statutory additional maternity leave period is to end.

(2) The date specified in the leave curtailment notice must be—

(a) at least one day after the end of the compulsory maternity leave period;

(**13**) Ordinary maternity leave period is determined in accordance with section 71(2) of the 1996 Act and S.I. 1999/3312.
(**14**) Additional maternity leave period is determined in accordance with section 73(2) of the 1996 Act and S.I. 1999/3312.