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. 0000

TERMS AND CONDITIONS OF EMPLOYMENT

The Paternity, Adoption and Shared Parental Leave (Parental Order Cases) 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), 75A(1), (2), (2A), (2B), (3), (6), and (7), 75B(1), (2), (3), (3A), (4), (7) and (8), 75C(1) and (2), 75D, 75G(1) to (6), 75H(1), (4), (7) to (14) and (16), 75I(1), (4) and (5), section 75J, 75K(1), (6) and (7), 80A(5)(aa), 80B(1), (2), (4A) and (5), 80C(1) and (6), 80D(1), 80E and 99 of the Employment Rights Act 1996(**2**), makes the Regulations.

(**1**) 1996 c. 18. Section 236(3) was amended by the Employment Relations Act 1999 (c. 26), Schedule 4, Part 3, paragraphs 5 and 42, the Employment Act 2002 (c. 22), Schedule 7, paragraphs 24 and 49, the Work and Families Act 2006(c. 18), Schedule 1, paragraphs 29 and 44, and 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. Paragraphs (ba) and (ca) were inserted into section 47(2) by the Employment Act 2002, Schedule 7, paragraphs 24 and 26, and paragraph (ca) was substituted by the Work and Families Act 2006, Schedule 1, paragraph 30, and amended by the Children and Families Act 2014, Schedule 7, paragraphs 29 and 31. Paragraph (bb) was inserted into section 47C(2) by the Children and Families Act 2014, Schedule 7, paragraphs 29 and 31; there are other amending instruments but none is relevant. Sections 75A to 75D were inserted by the Employment Act 2002, section 3. Section 75A(2A) was inserted by the Work and Families Act 2006, schedule 1, paragraph 33. Section 75A(2A) was amended by, and section 75A(2B) was inserted by, the Children and Families Act 2014, section 118(1) and (4); there are other amending instruments but none is relevant. Subsection (3) of section 75B was substituted by the Work and Families Act 2006, Schedule 1, paragraph 34. 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. Section 75A and 75B are applied to parental order parents and modified by S.I. 2014/[ ]. Section 75D(1A) was inserted by the Children and Families Act 2014, section 122(3). Sections 75G to 75K were inserted by the Children and Families Act 2014, section 117(1). Sections 75G and 75H are applied to parental order parents and modified by S.I. 2014. Sections 80A to 80E were inserted by the Employment Act 2002, section 1. Section 80B(4A) was inserted by the Children and Families Act 2014, section 118(7). Sections 80A and 80B is applied to parental order parents and modified by S.I. 2014/[ ], Schedule 2. Section 99 was substituted by the Employment Relations Act 1999, Schedule 4, part 3, paragraphs 5 and 16. Subsection (3)(aa) was inserted by the Children and Families Act 2014, section 127(2)(b). Paragraphs (ba) and (ca) were inserted into section 99(3) by the Employment Act 2002, Schedule 7, paragraphs 24 and 33, and paragraph (ca) was substituted by the Work and Families Act 2006, Schedule 1, paragraph 41, and amended by the Children and Families Act 2014, Schedule 7, paragraphs 29 and 39. Paragraph (bb) was inserted into section 99(3) by the Children and Families Act 2014 (c.6), sections Schedule 7, paragraphs 29 and 39.

PART 1

GENERAL

Citation and commencement

1. These Regulations may be cited as the Paternity, Adoption and Shared Parental Leave (Parental Order Cases) Regulations 2014 and come into force on 1st December 2014.

Interpretation

2. In these Regulations—

"Curtailment Regulations" means the Maternity and Adoption Leave (Curtailment of Statutory Rights to Leave) Regulations 2014(**3**);

"intended parent", in relation to a child, means a person who, on the day of the child's birth—

(a) applies, or intends to apply during the period of 6 months beginning with that day, with another person for a parental order in respect of the child, and

(b) expects the court to make a parental order on that application in respect of the child;

"Leave Regulations" means the Paternity and Adoption Leave Regulations 2002(**4**);

"parental order" means an order under section 54(1) of the Human Fertilisation and Embryology Act 2008(**5**):

"parental order parent" means a person—

(a) on whose application the court has made a parental order in respect of a child, or

(b) who is an intended parent of a child;

"paternity leave (adoption)" means paternity leave under regulation 8 of the Leave Regulations;

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

"SPL Regulations" means the Shared Parental Leave Regulations 2014(**6**).

Application of the Leave Regulations to Parental Order Parents

3. The provisions of the Leave Regulations in so far as they apply to paternity leave (adoption) and statutory adoption leave, apply to parental order parents with the modifications set out in Part 2 of these Regulations.

Application of the Curtailment Regulations to Parental Order Parents

4. The provisions of the Curtailment Regulations in so far as they apply to the curtailment of statutory adoption leave, apply to parental order parents with the modifications set out in Part 3 of these Regulations.

(**3**) S.I. 2014/[ ].
(**4**) S.I. 2002/2788; as amended by S.I. 2005/275; S.I. 2005/2114; S.I. 2006/2014; S.I. 2008/1966; S.I. 2011/1740; S.I. 2014/2112.
(**5**) 2008 c.22.
(**6**) S.I. 2014/[ ].

Application of the SPL Regulations to Parental Order Parents

5. The provisions of the SPL Regulations in so far as they apply to shared parental leave (adoption), apply to parental order parents with the modifications set out in Part 4 of these Regulations.

PART 2

PARENTAL ORDER PARENTS: PATERNITY AND ADOPTION LEAVE

6. Regulation 2 (interpretation) of the Leave Regulations as they apply to parental order parents shall read as if—

(a) in paragraph (1)—

(i) the definitions of "adopter" and "child" were omitted;

(ii) in the definition of "partner", the words "a child's mother or adopter" were "Parent A" and the words "mother or adopter", in both places, were "Parent A";

(iii) there were, in the appropriate places alphabetically, the following definitions—

""intended parent", in relation to a child, means a person who, on the day of the child's birth—

(a) applies, or intends to apply during the period of 6 months beginning with that day, with another person for a parental order in respect of the child, and

(b) expects the court to make a parental order on that application in respect of the child;

"Parent A" in relation to a child, means the parental order parent who has elected to be Parent A;

"parental order" means an order under section 54(1) of the Human Fertilisation and Embryology Act 2008;

"parental order parent" means a person—

(a) on whose application the court has made a parental order in respect of the child, or

(b) who is an intended parent of the child;

"parental statutory declaration" means a statutory declaration stating that the person making the declaration—

(a) has applied, or intends to apply, under section 54 of the Human Fertilisation and Embryology Act 2008 with another person for a parental order in respect of the child within the time limit for making such an application; and

(b) expects the court to make a parental order on that application in respect of the child;

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

(b) in paragraph (2)—

(i) the words "a child's mother or adopter" were "Parent A";

(ii) the words "the mother's or adopter's" were "Parent A's";

(c) the words of paragraph (4) were—

"a parental order parent elects to be Parent A in relation to a child if he agrees with the other parental order parent of the child that he, and not the other parental order parent, will be Parent A".

7. Regulation 3 (application) of the Leave Regulations as they apply to parental order parents shall read as if—

(a) paragraph (1) were omitted;

(b) the words of paragraph (2) were—

"The provisions in relation to paternity leave under regulation 8 and in relation to adoption leave under regulation 15 have effect in relation to children whose expected week of birth begins on or after 5th April 2015."

(c) in paragraphs (3) and (6), the words "8th December 2002" were "1st December 2014".

8. In regulation 4 (entitlement to paternity leave: birth), paragraph (1A)(**7**) of the Leave Regulations, as they apply to parental order parents, shall read as if the words of that paragraph were—

"An employee is not entitled to be absent from work under paragraph (1) if the employee—

(a) has taken any shared parental leave in respect of the child;

(b) meets the criteria for entitlement to paternity leave under regulation 8; or

(c) meets the criteria for entitlement to adoption leave under regulation 15."

9. In regulation 8 (entitlement to paternity leave: adoption) of the Leave Regulations as they apply to parental order parents—

(a) paragraph (1) shall read as if the words "the child's adopter" were "Parent A";

(b) paragraph (2)(a) shall read as if the words after "the week" to the end were "immediately preceding the 14th week before the expected week of the child's birth";

(c) paragraph (2)(b) shall read as if—

(i) the words "the child's adopter" were "Parent A";

(ii) the word "and" were omitted;

(d) paragraph (2)(c) shall read as if—

(i) the words "the adopter" were "Parent A";

(ii) the full stop were omitted;

(iii) there were inserted after that paragraph—

"and

(d) is a parental order parent of the child.";

(e) paragraph (4) shall read as if the words of that paragraph were—

"An employee shall be treated as having satisfied the condition in paragraph (2)(b) if he would have satisfied it but for the fact that Parent A has died.";

(f) paragraph (5) shall read as if the words of that paragraph were—

"An employee shall be treated as having satisfied the condition in paragraph (2)(c) if he would have satisfied it but for the fact that the child was stillborn after 24 weeks of pregnancy or has died."

(g) paragraph (6) shall read as if the words of that paragraph were—

(**7**) Paragraph (1A) was inserted by S.I. 2014/2112.

"An employee's entitlement to leave under this regulation shall not be affected by the birth or expected birth of more than one child as a result of the same pregnancy.";

(h) it shall read as if the following paragraph were inserted after paragraph (6)—

"(7) An employee shall be treated as having satisfied the condition in paragraph (2)(a) on the date of the child's birth notwithstanding the fact that he has not then been continuously employed for a period of not less than 26 weeks, where—

(a) the date on which the child is born is earlier than the 14th week before the week in which its birth is expected, and

(b) the employee would have been continuously employed for such a period if his employment had continued until that 14th week.".

10. In regulation 9 (options in respect of leave under regulation 8) of the Leave Regulations as they apply to parental order parents—

(a) paragraph (2) shall read as if the words "the child is placed with the adopter" were "the child is born";

(b) paragraph (3) shall read as if the words of that paragraph were—

"Subject to paragraph (2), an employee may choose to begin a period of leave under regulation 8 on—

(a) the date on which the child is born;

(b) the date falling such number of days after the date on which the child is born as the employee may specify in a notice under regulation 10; or

(c) a predetermined date, specified in a notice under that regulation, which is later than the first day of the expect week of the child's birth.".

11. Regulation 10 (notice and evidential requirements for leave under regulation 8) of the Leave Regulations as they apply to parental order parents shall read as if the words of that regulation were—

"**10.**—(1) An employee must give his employer notice of his intention to take leave in respect of a child under regulation 8, specifying—

(a) the expected week of the child's birth;

(b) the length of the period of leave that the employee has chosen to take in accordance with regulation 9(1); and

(c) the date on which, in accordance with regulation 9(3), the employee has chosen as the date on which the period of paternity leave should begin.

(2) The notice provided for in paragraph (1) must be given to the employer in or before the 15th week before the expected week of the child's birth.

(3) Where the employer requests it, an employee must give the employer, within 14 days of receipt of a request, a written declaration, signed by the employee, to the effect that—

(a) the purpose of the employee's absence from work will be that specified in regulation 8(1);

(b) the employee satisfies the conditions of entitlement in sub-paragraphs (b) and (c) of regulation 8(2); and

(c) the employee and Parent A are the parental order parents of the child.

(4) An employee who has given notice under paragraph (1) may vary the date chosen as the date on which the period of leave will begin provided that the employee has given the employer notice of the variation—