*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

# 2010 No. 0000

# TERMS AND CONDITIONS OF EMPLOYMENT

## The Additional Paternity Leave Regulations 2010

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| *Made - - - -* | **** |
| *Coming into force - -* | *6th April 2010* |

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 47C(2), 80AA, 80BB, 80C, 80D, 80E and 99 of the Employment Rights Act 1996(**1**).

In accordance with section 236(3)(**2**) of the Employment Rights Act 1996, a draft of these Regulations was laid before Parliament and approved by a resolution of each House of Parliament.

## PART 1

## GENERAL

### Citation, commencement and extent

**1.** These Regulations may be cited as the Additional Paternity Leave Regulations 2010 and shall come into force on 6th April 2010.

### Interpretation

**2.**—(1) In these Regulations—

"the 1996 Act" means the Employment Rights Act 1996;

"additional paternity leave" means leave under regulation 4 or regulation 14;

(**1**) 1996 c.18. Section 47C was inserted by the Employment Relations Act 1999 (c. 26), Schedule 4, Part 3, paragraphs 5 and 8. Further relevant amendments were made by the Employment Act 2002 (c. 22), Schedule 7, paragraphs 24 and 26 and by the Work and Families Act 2006 (c.18), Schedule 1, paragraph 30. Section 80AA was inserted by the Work and Families Act 2006, section 3 and section 80BB was inserted by section 4 of that Act. Sections 80C, 80D and 80E were inserted by section 1 of the Employment Act 2002 and subsequently amended by the Work and Families Act 2006, section 5. Section 99 was substituted by the Employment Relations Act 1999, Schedule 4, Part 3, paragraphs 5 and 16, and amended by the Employment Act 2002, Schedule 7, paragraphs 24 and 33 and by the Work and Families Act 2006, Schedule 1, paragraph 41.

(**2**) Section 236(3) of the Employment Rights Act 1996 was amended by the Employment Relations Act 1999, Schedule 4, Part 3, paragraphs 5 and 42 and the Employment Act 2002, Schedule 7, paragraphs 24 and 49. A further relevant amendment was made by paragraph 44 of Schedule 1 to the Work and Families Act 2006.

"adopter", in relation to a child, means a person who has been matched with the child for adoption and who has elected to take adoption leave in order to care for the child;

"adoption agency" has the meaning given, in relation to England and Wales, by section 2 of the Adoption and Children Act 2002(**3**), and in relation to Scotland, by section 119(1) of the Adoption and Children (Scotland) Act 2007(**4**);

"adoption leave" means ordinary adoption leave under section 75A of the 1996 Act or additional adoption leave under section 75B of that Act(**5**);

"child" means a person who is, or when placed with an adopter for adoption was, under the age of eighteen;

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

"job", in relation to an employee returning after additional paternity leave, means the nature of the work which the employee is employed to do in accordance with the employee's contract of employment and the capacity and place in which the employee is so employed;

"maternity allowance" has the meaning given in section 35(1) of the Social Security Contributions and Benefits Act 1992(**6**);

"maternity leave" means ordinary maternity leave under section 71 of the 1996 Act or additional maternity leave under section 73 of that Act(**7**);

"parental leave" means leave under regulation 13(1) of the Maternity and Parental Leave etc Regulations 1999(**8**);

"partner" in relation to a child's mother or adopter, means a person (whether of a different sex or the same sex) who lives with the mother or adopter and the child in an enduring family relationship but is not a relative of the mother or adopter of a kind specified in paragraph (2);

"processing", in relation to information, has the meaning given in section 1(1) of the Data Protection Act 1998(**9**);

"statutory adoption pay" has the meaning given in section 171ZL of the Social Security Contributions and Benefits Act 1992(**10**);

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

"statutory leave" means leave provided for in Part 8 of the 1996 Act.

(2) The relatives of a child's mother or adopter referred to in the definition of "partner" in paragraph (1) are the mother's or adopter's parent, grandparent, sister, brother, aunt or uncle.

(3) References to relationships in paragraph (2)—

(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 the child's adoptive, or former adoptive parents, but do not include any other adoptive relationships.

(**3**) 2002 c.38.
(**4**) 2007 asp. 4.
(**5**) Sections 75A and 75B were inserted by section 3 of the Employment Act 2002 and were amended by paragraphs 33 and 34 respectively of Schedule 1 to the Work and Families Act 2006.
(**6**) 1992. c.4. Sub-section 1 was substituted by section 53(1) of the Welfare Reforms and Persons Act 1999 and was further amended Schedule 7, paragraphs 2, 4(1) and (2) of the Employment Act 2002.
(**7**) Sections 71 and 73 were substituted by Schedule 4 Part 1 of the Employment Relations Act 1999 and amended by section 17 of the Employment Act 2002 and by paragraphs 31 and 32 respectively of the Work and Families Act 2006.
(**8**) S.I. 1999/3312, amended by S.I. 2001/410, there are other amending instruments but none is relevant.
(**9**) 1998 c.29.
(**10**) Section 171ZL was inserted by section 4 of the Employment Act 2002 and was amended by S.I 2006/2012 article 3.

(4) 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;

(b) 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(**11**), regulation 28(3) of the Adoption Agencies (Wales) Regulations 2005(**12**) or regulation 8(5) of the Adoption Agencies (Scotland) Regulations 2009(**13**).

(5) A reference in any provision of these Regulations to a period of continuous employment is to a period computed in accordance with Chapter 1 of Part 14 of the 1996 Act, as if that provision were a part of that Act.

**Application**

**3.**—(1) The provisions relating to additional paternity leave under regulation 4 have effect only in relation to children whose expected week of birth begins on or after 3rd April 2011.

(2) The provisions relating to additional paternity leave under regulation 14 have effect only in relation to children matched with a person who is notified of having been matched on or after 3rd April 2011.

(3) Regulation 33 (protection from detriment) has effect only in relation to an act or failure to act which takes place on or after 6th April 2010.

(4) For the purposes of paragraph (3)—

(a) where an act extends over a period, the reference to the date of the act is a reference to the last day of that period, and

(b) a failure to act is to be treated as done when it is decided upon.

(5) For the purposes of paragraph (4), in the absence of evidence establishing the contrary an employer shall be taken to decide on a failure to act—

(a) when the employee does an act inconsistent with doing the failed act, or

(b) if the employee has done no such inconsistent act, when the period expires within which the employee might reasonably have been expected to do the failed act if it was to be done.

(6) Regulation 34 (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(**14**)) falls on or after 6th April 2010.

# PART 2

## ADDITIONAL PATERNITY LEAVE (BIRTH)

**Entitlement to additional paternity leave (birth)**

**4.**—(1) An employee ("P") is entitled to be absent from work for the purpose of caring for a child ("C") if—

(a) P satisfies the conditions specified in paragraph (2);

(**11**) S.I. 2005/389, to which there are amendments not relevant to these Regulations.
(**12**) S.I. 2005/1313.
(**13**) S.S.I. 2009/154.
(**14**) Section 97 was amended by SI 2002/2034, regulations 11, 18-20, Schedule 2, Part 1, paragraphs 3(1) and (8) and the Employment Relations Act 1999, Schedule 4, Part 3, paragraphs 5, 14 and Schedule 9.

(b) P has complied with the requirements in regulation 6 and, where applicable, regulation 7; and

(c) C's mother ("M") satisfies the conditions specified in paragraph (5) and has signed the mother declaration referred to in regulation 6.

(2) The conditions referred to in paragraph (1)(a) are that P—

(a) has been continuously employed with an employer for a period of not less than 26 weeks ending with the relevant week;

(b) remains in continuous employment with that employer until the week before the first week of P's additional paternity leave;

(c) is either—

(i) C's father, or

(ii) married to or the partner or civil partner of M, but is not C's father; and

(d) has, or expects to have, the main responsibility (apart from any responsibility of M) for the upbringing of C.

(3) The references in this regulation to the relevant week are to the week immediately preceding the 14th week before C's expected week of birth.

(4) P shall be treated as having satisfied the condition in paragraph (2)(a) on the date of C's birth, notwithstanding the fact that P has not then been continuously employed for the period referred to in that paragraph, where—

(a) the date on which C is born is earlier than the relevant week; and

(b) P would have been continuously employed for such a period if P's employment had continued until the relevant week.

(5) The conditions referred to in paragraph (1)(c) are that M—

(a) is entitled by reference to becoming pregnant with C to one or more of the following—

(i) maternity leave;

(ii) statutory maternity pay; or

(iii) maternity allowance; and

(b) has, or is treated as having, returned to work under regulation 25.

(6) P's entitlement to leave under this regulation shall not be affected by the birth, or expected birth, of more than one child as the result of the same pregnancy.

**Options in respect of leave under regulation 4**

**5.**—(1) P may take leave under regulation 4 at any time within the period which begins 20 weeks after the date on which C is born and ends 12 months after this date.

(2) The minimum period of leave which may be taken is two consecutive weeks and the maximum period is 26 weeks.

(3) The leave must be taken in multiples of complete weeks and must be taken as one continuous period.

(4) The leave may not be taken until eight weeks after the date P gave leave notice under regulation 6(1).

(5) This regulation is subject to regulation 24 (disrupted placement or death of a child).

**Notice and evidential requirements for leave under regulation 4**

**6.**—(1) P must, not less than eight weeks before the start date chosen by P for the period of leave, give P's employer ("E")—

(a) a leave notice;

(b) an employee declaration; and

(c) a mother declaration.

(2) In this regulation—

(a) "a leave notice" means a written notice specifying—

(i) C's expected week of birth;

(ii) C's date of birth;

(iii) the dates P has chosen in accordance with regulation 5 as the start date and end date for the period of leave.

(b) "an employee declaration" means a written declaration signed by P, stating—

(i) that the purpose of the period of leave will be to care for C, and

(ii) that P satisfies the conditions in regulation 4(2)(c) and (d).

(c) "mother declaration" means a written declaration by M stating—

(i) M's name and address;

(ii) the date M intends to return to work (within the meaning of regulation 25);

(iii) M's National Insurance number;

(iv) that P satisfies the conditions in regulation 4(2)(c) and (d);

(v) that P is to M's knowledge the only person exercising the entitlement to additional paternity leave in respect of C; and

(vi) that M consents to E processing such of M's information as is contained in the declaration.

(3) Where E makes a request within 28 days of receiving P's leave notice, P must, within 28 days of E's request, give E such of the following as E may request—

(a) a copy of C's birth certificate; and

(b) the name and address of M's employer (or, if M is self-employed, M's business address).

(4) After giving leave notice, P must give E written notice ("withdrawal notice") as soon as reasonably practicable if—

(a) P no longer satisfies the conditions in regulation 4(2)(c) or (d); or

(b) M no longer satisfies the conditions in regulation 4(5).

(5) E may require P to take a period of leave where—

(a) P has given E withdrawal notice less than six weeks before the start date specified in P's leave notice or, where applicable, last varied in accordance with regulation 7, and

(b) it is not reasonably practicable for E to accommodate the change in P's arrangements.

(6) Leave that E may require P to take under paragraph (5)—

(a) shall be treated as additional paternity leave for the purpose of these Regulations;

(b) shall start on the start date specified in P's leave notice, or, where applicable, last varied in accordance with regulation 7; and

(c) shall end no later than—

(i) six weeks after the date on which withdrawal notice was given to E, or