Draft Legislation: *This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, The Additional Paternity Leave (Adoptions from Overseas) Regulations 2010 ISBN 978-0-11-149372-4*

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 (Adoptions from Overseas) Regulations 2010

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

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 47C, 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.

Citation, commencement and extent

1. These Regulations may be cited as the Additional Paternity Leave (Adoption from Overseas) Regulations 2010 and shall come into force on 6 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;

(**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 80BB was inserted by section 4 of the Work and Families Act 2006. Section 80BB applies to adoptions from overseas by virtue of the Employment Rights Act 1996 (Application of Section 80BB to Adoptions from Overseas) Regulations 2010 **(S.I. [2010/***]).** Sections 80C, 80D and 80E were inserted by section 1 of the Employment Act 2002 and subsequently amended by section 5 of the Work and Families Act 2006. 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", means, in relation to a child adopted from overseas, a person by whom the child has been or is to be adopted, or in a case where the child has been or is to be adopted by two people jointly, whichever of them has elected to take adoption leave in respect of the child;

"adoption from overseas" means the adoption of a child who enters Great Britain from outside the United Kingdom in connection with or for the purposes of adoption which does not involve the placement of the child for adoption under the law of any part of the United Kingdom, and "adopted from overseas" shall be construed accordingly;

"adoption leave" means ordinary adoption leave under section 75A of the 1996 Act or additional adoption leave under section 75B of that Act(**3**);

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

"enter Great Britain" means enter Great Britain from outside the United Kingdom in connection with or for the purposes of adoption, and cognate expressions shall be construed accordingly;

"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(**4**);

"maternity leave" means ordinary maternity leave under section 71 of the 1996 Act or additional maternity leave under section 73 of the 1996 Act(**5**);

"official notification" means written notification, issued by or on behalf of the relevant central authority, that it is prepared to issue a certificate to the overseas authority concerned with the adoption of the child, or has issued a certificate and sent it to that authority, confirming, in either case, that the adopter is eligible to adopt and has been assessed and approved as being a suitable adoptive parent;

"parental leave" means leave under regulation 13(1) of the Maternity and Parental Leave etc Regulations 1999(**6**);

"partner" in relation to a child's adopter, means a person (whether of a different sex or the same sex) who lives with adopter and the child in an enduring family relationship but is not a relative of the 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(**7**);

"relevant central authority" means—

(a) in the case of an adopter to whom Part 3 of the Adoptions with a Foreign Element Regulations 2005(**8**) apply and who is habitually resident in Wales, the Welsh Ministers;

(b) in the case of an adopter to whom Part 3 of the Adoptions with a Foreign Element (Scotland) Regulations 2009(**9**) apply and who is habitually resident in Scotland, the Scottish Ministers; and

(**3**) 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.
(**4**) 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.
(**5**) 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.
(**6**) S.I. 1999/3312, amended by S.I. 2001/410, there are other amending instruments but none is relevant.
(**7**) 1998 c 29.
(**8**) S.I. 2005/392.
(**9**) S.S.I 2009/182.

(c) in any other case, the Secretary of State;

"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 adopter referred to in the definition of "partner" in paragraph (1) are the 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.

(4) 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 an employee who is married to, or the civil partner or partner of an adopter whose child enters Great Britain on or after 3rd April 2011.

(2) Regulation 23 (protection from detriment) has effect only in relation to an act or failure to act which takes place on or after 6th April 2010.

(3) For the purposes of paragraph (2)—

(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.

(4) For the purposes of paragraph (3), 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.

(5) Regulation 24 (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(**11**)) falls on or after 6th April 2010.

Entitlement to additional paternity leave (adoptions from overseas)

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);

(**10**) 1992 c.4. Section 171ZL was inserted by section 4 of the Employment Act 2002 and was amended by article 3 of S.I 2006/2012.
(**11**) 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 adopter ("A") satisfies the conditions specified in paragraph (4) and has signed the adopter declaration referred to in regulation 6.

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

(a) has, before C entered Great Britain, been continuously employed with P's employer ("E") for a period of not less than 26 weeks either—

(i) ending with the week official notification was sent to A; or

(ii) commencing with the week in which P's employment with E began;

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

(c) is either married to, the civil partner or the partner of A; and

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

(3) In paragraph (2)(a)(i) and (ii), "week" means the period of seven days beginning with Sunday.

(4) The conditions referred to in paragraph (1)(c) are that A—

(a) is entitled by reference to the adoption of C to one or both of—

(i) adoption leave, or

(ii) Statutory Adoption Pay, and

(b) has, or is treated as having, returned to work under regulation 15.

(5) P's entitlement to leave under this section shall not be affected by the adoption from overseas of more than one child by the adopter as part of the same arrangement.

Options in respect of leave under regulation 4

5.—(1) P may choose to take leave under regulation 4 at any time within the period which begins 20 weeks after the date on which C entered Great Britain 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 of P's leave notice under regulation 6(1).

(5) This regulation is subject to regulation 14 (disrupted placement or death of 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) an adopter declaration.

(2) In this regulation—

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

(i) the date on which A received official notification;

(ii) the date on which C entered Great Britain;

(iii) the dates which 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) "an adopter declaration" means a written declaration by A stating—

(i) A's name and address;

(ii) the date A intends to return to work (within the meaning of regulation 15);

(iii) A's National Insurance number;

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

(v) that A consents to E processing such of A'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 the official notification relating to C;

(b) evidence of the date on which C entered Great Britain; and

(c) the name and address of A's employer (or, if A is self-employed, A'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);

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

(5) E may require that P 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

(ii) the end date specified in P's leave notice, or last varied in accordance with regulation 7,

whichever is the earlier.

(7) E may require P to remain on leave where—

(a) P has given E withdrawal notice after P's period of additional paternity leave has begun, and

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

(8) The period for which E may require P to remain on leave under paragraph (7)—

(a) shall end no later than the earlier of—