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

2008 No. xxxx

TERMS AND CONDITIONS OF EMPLOYMENT

The Maternity and Parental Leave etc. and the Paternity and Adoption Leave (Amendment) Regulations 2008

Made - - - -

Coming into force - -

The Secretary of State for Business, Enterprise and Regulatory Reform makes the following Regulations in exercise of the powers conferred on him by sections 47C(1) and (2), 73(4), (6) and (7), 75(2), 75B(4), (7) and (8), 75D(2) and 99(1) and (2) of the Employment Rights Act 1996(**1**).

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

Citation and commencement

1. These Regulations may be cited as the Maternity and Parental Leave etc. and the Paternity and Adoption Leave (Amendment) Regulations 2008 and shall come into force on the day after the day on which they are made.

Application

2.—(1) The amendments to the Maternity and Parental Leave etc. Regulations 1999(**3**) provided for in these Regulations have effect only in relation to employees whose expected week of childbirth begins on or after 5th October 2008.

(**1**) 1996 c. 18. Section 47C was inserted by section 9 of and paragraphs 5 and 8 of Part III of Schedule 4 to the Employment Relations Act 1999 (c. 26) and subsection (2) was amended by section 53 of and paragraphs 24 and 26 of Schedule 7 to the Employment Act 2002 (c. 22). Sections 71 to 80 were substituted by section 7 of and Part I of Schedule 4 to the Employment Relations Act 1999. Sections 75A to 75D were inserted by section 3 of the Employment Act 2002. Section 99 was substituted by section 9 of and paragraphs 5 and 16 of Part III of Schedule 4 to the Employment Relations Act 1999 and was amended by section 53 of and paragraphs 24 and 33 of Schedule 7 to the Employment Act 2002. The word "prescribed" in section 47C is defined in subsection (2) of that section, the same word in section 73 is defined in section 75(2) and in section 99 it is defined in subsection (2) of that section. Further amendments have been made to sections 47C, 73, 75B and 99 which are not relevant to these Regulations.

(**2**) Section 236(3) of the Employment Rights Act 1996 was amended by paragraphs 5 and 42 of Part III of Schedule 4 to the Employment Relations Act 1999. A further relevant amendment was made by paragraph 44 of Schedule 1 to the Work and Families Act 2006 (c. 18).

(**3**) S.I. 1999/3312, amended by S.I. 2002/2789. There are other amending instruments, but none is relevant.

(2) The amendments to the Paternity and Adoption Leave Regulations 2002(**4**) provided for in these Regulations have effect only in relation to an employee with whom a child is expected to be placed for adoption, where the placement is expected to occur on or after 5th October 2008.

(3) For the purposes of paragraph (2) the date on which the child is actually placed for adoption is immaterial.

(4) The amendments to the Paternity and Adoption Leave Regulations 2002 applied to adoption from overseas by virtue of and as modified by the Paternity and Adoption Leave (Adoption from Overseas) Regulations 2003(**5**) have effect only where the adopter's child enters Great Britain on or after 5th October 2008.

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

"adopter", in relation to a child, means 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

"enters Great Britain" means enters Great Britain from outside the United Kingdom in connection with or for the purposes of adoption.

Amendments to the Maternity and Parental Leave etc. Regulations 1999

3. The Maternity and Parental Leave etc. Regulations 1999 are amended in accordance with regulations 4 to 7.

Application of terms and conditions during ordinary maternity leave and additional maternity leave

4.—(1) In regulation 9(**6**) (application of terms and conditions during ordinary maternity leave)—

(a) in the heading, after "ordinary maternity leave", insert "and additional maternity leave";

(b) in paragraph (1), after "ordinary maternity leave", insert "or additional maternity leave";

(c) in paragraph (1)(b), for "the exception in section 71(4)(b)", substitute "the exceptions in sections 71(4)(b) and 73(4)(b)";

(d) in paragraph (2), for "section 71(5)", substitute "sections 71(5) and 73(5)";

(e) in paragraph (3), for "section 71", substitute "sections 71 and 73" ; and

(f) after paragraph (3) insert—

"(4) In the case of accrual of rights under an employment-related benefit scheme within the meaning given by Schedule 5 to the Social Security Act 1989(**7**), nothing in paragraph (1)(a) concerning the treatment of additional maternity leave shall be taken to impose a requirement which exceeds the requirements of paragraph 5 of that Schedule.".

(2) In regulation 17 (application of terms and conditions during periods of leave), omit "additional maternity leave or".

(**4**) S.I. 2002/2788, amended by S.I. 2005/275. There are other amending instruments, but none is relevant.
(**5**) S.I. 2003/921.
(**6**) Regulation 9 was substituted by regulations 3 and 9 of the Maternity and Parental Leave (Amendment) Regulations 2002 (S.I. 2002/2789).
(**7**) 1989 c. 24. Schedule 5 was amended by section 265(1) of the Pensions Act 2004 (c. 35). Further amendments have been made to Schedule 5, which are not relevant to these Regulations.