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

2006 No. 0000

TERMS AND CONDITIONS OF EMPLOYMENT

The Maternity and Parental Leave etc. and the Paternity and Adoption Leave (Amendment) Regulations 2006

Made - - - -	*2006*
Coming into force - -	*1st October 2006*

The Secretary of State makes the following Regulations in exercise of the powers conferred on him by sections 47C(2), 71(3), 73(2) and (3), 74(2), (3) and (4), 75(1) and (2), 75A(2) and (2A), 75B(2) and (3), 75C, 75D(1) and 99(1)(**1**) of the Employment Rights Act 1996(**2**).

In accordance with section 236(3)(**3**) 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 and commencement

1. These Regulations may be cited as the Maternity and Parental Leave etc. and the Paternity and Adoption Leave (Amendment) Regulations 2006 and shall come into force on 1st October 2006.

(**1**) Section 47C of the Employment Rights Act 1996 was inserted by 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 79 of the 1996 Act were substituted by section 7 of and Part 1 of Schedule 4 to the Employment Relations Act 1999; section 71 was further amended by paragraph 31 of Schedule 4 to the Work and Families Act 2006 (c.18); section 73 was further amended by paragraph 32 of Schedule 1 to the Work and Families Act 2006. Chapter 1A (sections 75A to 75D) was inserted by section 3 of the Employment Act 2002. Subsection 75A(2A) of the 1996 Act was inserted by paragraph 33 of Schedule 1 to the Work and Families Act 2006. Paragraph 43 of Schedule 1 to the Work and Families Act 2006 substituted a new subsection (3) to section 75B of the 1996 Act. Section 99 of the 1996 Act was inserted by paragraph 16 of Part III of Schedule 4 to the Employment Relations Act 1999 and was amended by paragraphs 24 and 33 of Schedule 7 to the 2002 Act. The word "prescribed" in section 47C of the 1996 Act is defined in subsection (2) of that section, the same word in sections 71 and 73 of that Act 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 and 99 by the 2006 Act which are not relevant to these Regulations.

(**2**) 1996 c.18; Part VIII (sections 71 to 85) of the Employment Rights Act 1996 was substituted by a new Part VIII (sections 71 to 75, 76 to 80) by Part I of Schedule 4 to the Employment Relations Act 1999.

(**3**) 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 43 of Schedule 1 to the Work and Families Act 2006.

Application

2.—(1) The amendments to the Maternity and Parental Leave etc. Regulations 1999(**4**) provided for in these Regulations have effect only in relation to employees whose expected week of childbirth begins on or after 1st April 2007.

(2) The amendments to the Paternity and Adoption Leave Regulations 2002(**5**) 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 1st April 2007. For the purposes of this paragraph, the date on which the child is actually placed for adoption is immaterial.

(3) 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(**6**) have effect only where the adopter's child enters Great Britain on or after 1st April 2007.

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

"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;

"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 shall be amended as follows.

4. In regulation 2(1) (interpretation), after the definition of "statutory leave" there shall be inserted the following definitions—

""statutory maternity leave" means ordinary maternity leave and additional maternity leave;

"statutory maternity leave period" means the period during which the employee is on statutory maternity leave;".

5. In regulation 4 (entitlement to ordinary maternity leave), after "ordinary maternity leave"—

(a) in both the heading and in the first line of paragraph (1) insert "and to additional maternity leave"; and

(b) in both paragraphs (3)(b) and (4)(b) insert "or to additional maternity leave".

6. Omit regulation 5 (entitlement to additional maternity leave).

7. In regulation 7(6) (duration of maternity leave periods: notification by employer)—

(a) omit sub-paragraphs (a) and (b); and

(b) after "shall notify the employee of the date on which" insert "her additional maternity leave period shall end".

8. In regulation 11 (requirement to notify intention to return during a maternity leave period)—

(a) for paragraph (1) substitute—

(**4**) S.I. 1999/3312; relevant amending instrument is the Maternity and Parental Leave (Amendment) Regulations 2002 (S.I. 2002/2789).
(**5**) S.I. 2002/2788 to which there are amendments not relevant to these Regulations.
(**6**) S.I. 2003/921.

"(1) An employee who intends to return to work earlier than the end of her additional maternity leave period, shall give to her employer not less than 8 weeks' notice of the date on which she intends to return.";

(b) in paragraph (2)—

(i) for "a maternity leave period" substitute "her additional maternity leave period";

(ii) for "28 days'" substitute "8 weeks'";

(c) after paragraph (2) insert—

"(2A) An employee who complies with her obligations in paragraph (1) or whose employer has postponed her return in the circumstances described in paragraph (2), and who then decides to return to work—

(a) earlier than the original return date, must give her employer not less than 8 weeks' notice of the date on which she now intends to return;

(b) later than the original return date, must give her employer not less than 8 weeks' notice ending with the original return date.

(2B) In paragraph (2A) the "original return date" means the date which the employee notified to her employer as the date of her return to work under paragraph (1), or the date to which her return was postponed by her employer under paragraph (2).";

(d) in paragraph (5), for "the relevant maternity leave period" substitute "her additional maternity leave period".

9. After regulation 11 insert—

"**Work during maternity leave period**

12A.—(1) Subject to paragraph (5), an employee may carry out up to 10 days' work for her employer during her statutory maternity leave period without bringing her maternity leave to an end.

(2) For the purposes of this regulation, any work carried out on any day shall constitute a day's work.

(3) Subject to paragraph (4), for the purposes of this regulation, work means any work done under the contract of employment and may include training or any activity undertaken for the purposes of keeping in touch with the workplace.

(4) Reasonable contact from time to time between an employee and her employer which either party is entitled to make during a maternity leave period (for example to discuss an employee's return to work) shall not bring that period to an end.

(5) Paragraph (1) shall not apply in relation to any work carried out by the employee at any time from childbirth to the end of the period of two weeks which commences with the day on which childbirth occurs.

(6) This regulation does not confer any right on an employer to require that any work be carried out during the statutory maternity leave period, nor any right on an employee to work during the statutory maternity leave period.

(7) Any days' work carried out under this regulation shall not have the effect of extending the total duration of the statutory maternity leave period.".

10. In regulation 19 (protection from detriment), after paragraph (2)(ee) insert—

"(eee) undertook, considered undertaking or refused to undertake work in accordance with regulation 12A;".

11. In regulation 20 (unfair dismissal)—