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

2003 No.

TERMS AND CONDITIONS OF EMPLOYMENT

The Paternity and Adoption Leave (Adoption from Overseas) Regulations 2003

Made - - - -	*2003*
Coming into force - -	*6th April 2003*

Whereas a draft of the following 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:

Now, therefore, the Secretary of State, in exercise of the powers conferred on her by sections 47C(2), 75A(1) to (3), (6) and (7), 75B(1), (2), (4) and (8), 75C(1) and (2), 75D(1), 80B(1), (2) and (5), 80C(1) and (6), 80D(1), 80E and 99(1) of that Act(**2**), hereby makes the following Regulations:

PART I

GENERAL

Citation and commencement

1. These Regulations may be cited as the Paternity and Adoption Leave (Adoption from Overseas) Regulations 2003 and shall come into force on 6th April 2003.

(**1**) 1996 c. 18; section 236(3) was amended by paragraph 42 of Part 3 of Schedule 4 to the Employment Relations Act 1999 (c. 26) and paragraph 49 of Schedule 7 to the Employment Act 2002 (c. 22).

(**2**) Section 47C of the Employment Rights Act 1996 was inserted by paragraph 8 of Part 3 of Schedule 4 to the Employment Relations Act 1999 and amended by paragraph 26 of Schedule 7 to the Employment Act 2002; sections 75A to 75D were inserted by section 3 of the Employment Act 2002, and sections 80A to 80E by section 1 of that Act; section 99 was substituted by paragraph 16 of Part 3 of Schedule 4 to the 1999 Act and amended by paragraph 33 of Schedule 7 to the Employment Act 2002. The word "prescribed" in section 47C of the 1996 Act is defined in subsection (2) of that section; the same word in sections 75A and 75B of the 1996 Act is defined in section 75D(2), inserted by section 3 of the 2002 Act; in section 99 of the 1996 Act it is defined in subsection (2) of that section. Section 80B of the Employment Rights Act 1996 is, by regulations made under section 80B(8) of that Act, namely the Employment Rights Act 1996 (Application of Section 80B to Adoptions from Overseas) Regulations 2003 (S.I. 2003/), applied to cases which involve adoption, but not the placement of a child for adoption under the law of any part of the United Kingdom, with the modifications prescribed by those Regulations. The sections cited in the preamble that are so modified are sections 80B(1) and (5).

Interpretation

2. In these Regulations—

"the Act" means the Employment Rights Act 1996;

"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;

"the Leave Regulations" means the Paternity and Adoption Leave Regulations 2002(**3**).

Application of the Leave Regulations to adoptions from overseas

3. The provisions of the Leave Regulations shall apply to adoptions from overseas with the modifications set out in these Regulations.

Interpretation

4.—(1) Regulation 2 of the Leave Regulations shall be modified in accordance with the following paragraphs of this regulation.

(2) In paragraph (1),

(a) for the definition of "adopter", substitute—

> ""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;" and

(b) in the appropriate places in alphabetical order insert—

> ""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;"
>
> ""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;"
>
> ""official notification" means written notification, issued by or on behalf of the relevant domestic 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;" and
>
> ""relevant domestic authority" means—
>
> (a) in the case of an adopter to whom the Intercountry Adoption (Hague Convention) Regulations 2003(**4**) apply and who is habitually resident in Wales, the National Assembly for Wales;
>
> (b) in the case of an adopter to whom the Intercountry Adoption (Hague Convention) (Scotland) Regulations 2003(**5**) apply and who is habitually resident in Scotland, the Scottish Ministers; and
>
> (c) in any other case, the Secretary of State;".

(**3**) S.I. 2002/2788.
(**4**) S.I. 2003/118.
(**5**) S.S.I. 2003/19.

(3) For paragraph (4) substitute—

"(4) For the purposes of these Regulations, in a case where a child is to be adopted by two people jointly, a person elects to be a child's adopter, if he and the other person agree, at the time when the official notification is received, that he and not the other person will be the adopter."

Application

5.—(1) Regulation 3 of the Leave Regulations shall be modified in accordance with the following paragraphs of this regulation.

(2) For paragraphs (1) and (2), substitute—

"(1) The provisions relating to adoption leave under regulation 15 below have effect only where the adopter's child enters Great Britain on or after 6th April 2003.

(2) The provisions relating to paternity leave under regulation 8 below have effect only in relation to a person who is married to or the partner of an adopter whose child enters Great Britain on or after 6th April 2003.".

(3) In paragraph (3), for "8th December 2002" substitute "6th April 2003".

(4) In paragraph (6), for "8th December 2002" substitute "6th April 2003".

Entitlement to paternity leave: birth

6. Regulations 4 to 7 of the Leave Regulations shall be omitted.

Entitlement to paternity leave: adoption from overseas

7. For regulations 8 to 10 of the Leave Regulations substitute—

"**Entitlement to paternity leave**

8.—(1) An employee is entitled to be absent from work for the purpose of caring for a child adopted from overseas or supporting the child's adopter if he—

(a) satisifies the conditions in paragraph (2); and

(b) has complied with the notice requirements in regulation 10 and, where applicable, the evidential requirements in that regulation.

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

(a) the child's adopter has received an official notification;

(b) the employee has been continuously employed for a period of not less than 26 weeks either—

(i) ending with the week in which the official notification was received, or

(ii) commencing with the week in which the employee's employment with the employer began;

(c) the employee is either married to or the partner of the child's adopter, and

(d) the employee has, or expects to have, the main responsibility (apart from the responsibility of the child's adopter) for the upbringing of the child.

(3) In paragraph (2)(b), "week" means the period of seven days beginning with Sunday.

(4) 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's adopter died during the period of 56 days commencing with the date on which the child entered Great Britain.

(5) An employee shall be treated as having satisfied the condition in paragraph (2)(d) if he would have satisfied it but for the fact that the child has ceased to live with the adopter.

(6) An employee's entitlement to leave under this regulation shall not be affected by the fact that more than one child is the subject of adoption from overseas by the adopter as part of the same arrangement.

Options in respect of leave under regulation 8

9.—(1) An employee may choose to take either one week's leave or two consecutive weeks' leave in respect of a child under regulation 8.

(2) The leave may only be taken during the period of 56 days beginning with the date on which the child enters Great Britain.

(3) Subject to paragraph (2) and, where applicable, paragraph (4), an employee may choose to begin the period of leave under regulation 8 on—

(a) the date on which the child enters Great Britain; or

(b) a predetermined date, specified in a notice under regulation 10, which is later than the date on which the child enters Great Britain.

(4) In a case where the adopter received an official notification before 6th April 2003 and the adopter's child enters Great Britain on or after that date, the employee may choose to begin a period of paternity leave only on a predetermined date, specified in a notice under regulation 10, which is later than the date of entry and, unless the employer agrees to an earlier commencement of the leave period, is at least twenty-eight days after the date on which that notice was given.

Notice and evidential requirements for leave under regulation 8

10.—(1) An employee intending to take paternity leave in respect of a child must give his employer notice of each of the following matters—

(a) the date on which the adopter of the child received an official notification;

(b) the date on which the child is expected to enter Great Britain;

(c) the date which the employee has chosen as the date on which his period of paternity leave should begin, and

(d) the date on which the child enters Great Britain.

(2) Notice provided for in—

(a) paragraph (1)(a) and (b) must be given to the employer no more than 28 days after the date on which the adopter of the child receives the official notification or the date on which he completes 26 weeks' continuous employment with the employer, whichever is later;

(b) paragraph (1)(c) must be given to the employer at least 28 days prior to the date which the employee has chosen as the date on which his period of paternity leave should begin, and

(c) paragraph (1)(d) must be given to the employer no more than 28 days after the date on which the child enters Great Britain.

(3) Where the employer requests it, an employee must give his employer, within 14 days of receipt of a request, a written declaration, signed by the employee, to the effect that his partner or spouse has received an official notification and that he satisfies the conditions of entitlement in regulation 8(2)(c) and (d).