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

2002 No.

TERMS AND CONDITIONS OF EMPLOYMENT

The Maternity and Parental Leave (Amendment) Regulations 2002

Made - - - - 2002

Coming into force - - 24th November 2002

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), 71(1) to (4), (6) and (7), 73(1), (2), (4) and (7), 74(4), 75(1), 76 and 99(1) of that Act(**2**), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Maternity and Parental Leave (Amendment) Regulations 2002 and shall come into force on 24th November 2002.

(2) In these Regulations, "the Principal Regulations" means the Maternity and Parental Leave etc. Regulations 1999(**3**).

Application

2.—(1) The amendments to the Principal Regulations provided for in regulations 5 to 11, 13 and 14 below (all of which concern maternity leave), and the amendment in regulation 12 in so far as it relates to the right to return from maternity leave, have effect only in relation to employees whose expected week of childbirth begins on or after 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).

(**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; sections 71 to 75 of the 1996 Act were substituted by Part 1 of Schedule 4 to the 1999 Act, and section 99 of the 1996 Act was substituted by paragraph 16 of Part 3 of Schedule 4 to the 1999 Act. Sections 71(4) and (7) and 73 of the 1996 Act were amended by section 17 of the Employment Act 2002 (c. 22). 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.

(**3**) S.I. 1999/3312, to which there are amendments not relevant to these Regulations.

(2) The amendment to the Principal Regulations provided for in regulation 12, in so far as it relates to the right to return after parental leave, has effect only in relation to employees returning from a period of leave begun on or after 6th April 2003.

Amendments to the Principal Regulations

3. The Principal Regulations shall be amended as follows.

4. In regulation 2(1) (interpretation)—

(a) after the definition of "the 1996 Act" insert—

"'additional adoption leave' means leave under section 75B of the 1996 Act;"

(b) in the definition of "job" omit "additional";

(c) after the definition of "parental responsibility" insert—

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

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

(a) in paragraph (1)(a), for "at least 21 days before the date on which she intends her ordinary maternity leave period to start", substitute "no later than the end of the fifteenth week before her expected week of childbirth";

(b) after paragraph (1) insert—

"(1A) An employee who has notified her employer under paragraph (1)(a)(iii) of the date on which she intends her ordinary maternity leave period to start may subsequently vary that date, provided that she notifies her employer of the variation at least—

(a) 28 days before the date varied, or

(b) 28 days before the new date,

whichever is the earlier, or, if that is not reasonably practicable, as soon as is reasonably practicable.";

(c) in paragraph (2), for "The notification provided for in paragraph (1)(a)(iii)" substitute—

"Notification under paragraph (1)(a)(iii) or (1A)";

(d) in paragraph (3)—

(i) before "the first day" insert "the day which follows";

(ii) for "the sixth week" substitute "the fourth week";

(iii) at the end of sub-paragraph (b) insert "and of the date on which her absence on that account began";

(e) in paragraph (4)—

(i) for "with" substitute "on the day which follows";

(ii) at the end of sub-paragraph (b) insert "and of the date on which the birth occurred".

6. In regulation 5(b) (entitlement to additional maternity leave: qualifying period of employment)—

(a) for "the eleventh week" substitute "the fourteenth week";

(b) for "a year" substitute "26 weeks".

7. In regulation 6 (commencement of maternity leave periods)—

(a) in paragraph (1)(a)—

(i) omit ", in accordance with regulation 4(1)(a)(iii),";

(ii) after "her employer" insert ", in accordance with regulation 4,";

(iii) after "to start," insert "or, if by virtue of the provision for variation in that regulation she has notified more than one such date, the last date she notifies,";

(b) in paragraph (1)(b)—

(i) before "the first day" insert "the day which follows";

(ii) for "the sixth week" substitute "the fourth week";

(c) in paragraph (2), for "with" substitute "on the day which follows".

8. In regulation 7 (duration of maternity leave periods)—

(a) in paragraph (1), for "eighteen weeks" substitute "26 weeks";

(b) in paragraph (4), for "29 weeks beginning with the week of childbirth" substitute "26 weeks from the day on which it commenced";

(c) after paragraph (5) insert—

"(6) An employer who is notified under any provision of regulation 4 of the date on which, by virtue of any provision of regulation 6, an employee's ordinary maternity leave period will commence or has commenced shall notify the employee of the date on which—

(a) if the employee is entitled only to ordinary maternity leave, her ordinary maternity leave period will end, or

(b) if the employee is entitled to both ordinary and additional maternity leave, her additional maternity leave period will end.

(7) The notification provided for in paragraph (6) shall be given to the employee—

(a) where the employer is notified under regulation 4(1)(a)(iii), (3)(b) or (4)(b), within 28 days of the date on which he received the notification;

(b) where the employer is notified under regulation 4(1A), within 28 days of the date on which the employee's ordinary maternity leave period commenced."

9. For regulation 9 substitute—

"**Application of terms and conditions during ordinary maternity leave**

9.—(1) An employee who takes ordinary maternity leave—

(a) is entitled, during the period of leave, to the benefit of all of the terms and conditions of employment which would have applied if she had not been absent, and

(b) is bound, during that period, by any obligations arising under those terms and conditions, subject only to the exception in section 71(4)(b) of the 1996 Act.

(2) In paragraph (1)(a), "terms and conditions" has the meaning given by section 71(5) of the 1996 Act, and accordingly does not include terms and conditions about remuneration.

(3) For the purposes of section 71 of the 1996 Act, only sums payable to an employee by way of wages or salary are to be treated as remuneration."

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

(a) in paragraph (1)—

(i) after "she is entitled to" insert "both ordinary and";

(ii) for "21 days"' substitute "28 days"'

(b) in paragraph (2), for "21 days"' substitute "28 days"';

(c) after paragraph (4) insert—