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 Paternity and Adoption Leave Regulations 2002

Made - - - -	*2002*
Coming into force - -	*8th December 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), 75A(1) to (3), (6) and (7), 75B(1), (2), (4) and (8), 75C(1) and (2), 75D(1), 80A(1), (2) and (5), 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 1

GENERAL

Citation and commencement

1. These Regulations may be cited as the Paternity and Adoption Leave Regulations 2002 and shall come into force on 8th December 2002.

Interpretation

2.—(1) In these Regulations—

(**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.

"the 1996 Act" means the Employment Rights Act 1996;

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

"additional maternity leave" means leave under section 73 of the 1996 Act;

"adopter", in relation to a child, means a person who has been matched with the child for adoption, or, in a case where two people have been matched jointly, whichever of them has elected to be the child's adopter for the purposes of these Regulations;

"adoption agency" has the meaning given, in relation to England and Wales, by section 1(4) of the Adoption Act 1976(**3**) and, in relation to Scotland, by section 1(4) of the Adoption (Scotland) Act 1978(**4**);

"adoption leave" means ordinary or additional adoption leave;

"child" means a person who is, or when placed with an adopter for adoption was, under the age of 18;

"contract of employment" means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing;

"employee" means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment;

"employer" means the person by whom an employee is (or, where the employment has ceased, was) employed;

"expected week", in relation to the birth of a child, means the week, beginning with midnight between Saturday and Sunday, in which it is expected that the child will be born;

"ordinary adoption leave" means leave under section 75A of the 1996 Act;

"parental leave" means leave under regulation 13(1) of the Maternity and Parental Leave etc. Regulations 1999(**5**);

"partner", in relation to a child's mother or adopter, means a person (whether of a different sex or the same sex) who lives with the mother or adopter and the child in an enduring family relationship but is not a relative of the mother or adopter of a kind specified in paragraph (2);

"paternity leave" means leave under regulation 4 or regulation 8 of these Regulations;

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

(2) The relatives of a child's mother or adopter referred to in the definition of "partner" in paragraph (1) are the mother's or 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 his adoptive, or former adoptive, parents,

but do not include any other adoptive relationships.

(4) For the purposes of these Regulations—

(a) a person is matched with a child for adoption when an adoption agency decides that that person would be a suitable adoptive parent for the child, either individually or jointly with another person, and

(b) a person is notified of having been matched with a child on the date on which he receives notification of the agency's decision, under regulation 11(2) of the Adoption Agencies

(**3**) 1976 c. 36; section 1(4) was amended by paragraph 5 of Schedule 4 to the Care Standards Act 2000 (c. 14).
(**4**) 1978 c. 28.
(**5**) SI 1999/3312, to which there are amendments not relevant to these Regulations.

Regulations 1983(**6**) or regulation 12(3) of the Adoption Agencies (Scotland) Regulations 1996(**7**);

(c) a person elects to be a child's adopter, in a case where the child is matched with him and another person jointly, if he and that person agree, at the time at which they are matched, that he and not the other person will be the adopter.

(5) 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 provision of that Act.

(6) For the purposes of these Regulations, any two employers shall be treated as associated if—

(a) one is a company of which the other (directly or indirectly) has control; or

(b) both are companies of which a third person (directly or indirectly) has control;

and "associated employer" shall be construed accordingly.

Application

3.—(1) The provisions relating to paternity leave under regulation 4 below have effect only in relation to children—

(a) born on or after 6th April 2003, or

(b) whose expected week of birth begins on or after that date.

(2) The provisions relating to paternity leave under regulation 8 and adoption leave under regulation 15 below have effect only in relation to children—

(a) matched with a person who is notified of having been matched on or after 6th April 2003, or

(b) placed for adoption on or after that date.

(3) Regulation 28 (protection from detriment) has effect only in relation to an act or failure to act which takes place on or after 8th December 2002.

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

(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 was decided on.

(5) For the purposes of paragraph (4), in the absence of evidence establishing the contrary an employer shall be taken to decide on a failure to act—

(a) when he does an act inconsistent with doing the failed act, or

(b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

(6) Regulation 29 (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) falls on or after 8th December 2002.

(**6**) SI 1983/1964.
(**7**) SI 1996/3266.

PART 2

PATERNITY LEAVE

Entitlement to paternity leave: birth

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

(a) satisfies the conditions specified in paragraph (2), and

(b) has complied with the notice requirements in regulation 6 and, where applicable, the evidential requirements in that regulation.

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

(a) has been continuously employed for a period of not less than 26 weeks ending with the week immediately preceding the 14th week before the expected week of the child's birth;

(b) is either—

(i) the father of the child or;

(ii) married to or the partner of the child's mother, but not the child's father;

(c) has, or expects to have—

(i) if he is the child's father, responsibility for the upbringing of the child;

(ii) if he is the mother's husband or partner but not the child's father, the main responsibility (apart from any responsibility of the mother) for the upbringing of the child.

(3) An employee shall be treated as having satisfied the condition in paragraph (2)(a) on the date of the child's birth notwithstanding the fact that he has not then been continuously employed for a period of not less than 26 weeks, where—

(a) the date on which the child is born is earlier than the 14th week before the week in which its birth is expected, and

(b) the employee would have been continuously employed for such a period if his employment had continued until that 14th week.

(4) An employee shall be treated as having satisfied the condition in paragraph (2)(b)(ii) if he would have satisfied it but for the fact that the child's mother has died.

(5) 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 was stillborn after 24 weeks of pregnancy or has died.

(6) An employee's entitlement to leave under this regulation shall not be affected by the birth, or expected birth, of more than one child as a result of the same pregnancy.

Options in respect of leave under regulation 4

5.—(1) An employee may choose to take either one week's leave or two consecutive weeks' leave in respect of a child under regulation 4.

(2) The leave may only be taken during the period which begins with the date on which the child is born and ends—

(a) except in the case referred to in sub-paragraph (b), 56 days after that date;

(b) in a case where the child is born before the first day of the expected week of its birth, 56 days after that day.

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

(a) the date on which the child is born;

(b) the date falling such number of days after the date on which the child is born as the employee may specify in a notice under regulation 6, or

(c) a predetermined date, specified in a notice under that regulation, which is later than the first day of the expected week of the child's birth.

(4) In a case where the leave is in respect of a child whose expected week of birth begins before 6th April 2003, an employee may choose to begin a period of leave only on a predetermined date, specified in a notice under regulation 6, which is at least 28 days after the date on which that notice is given.

Notice and evidential requirements for leave under regulation 4

6.—(1) An employee must give his employer notice of his intention to take leave in respect of a child under regulation 4, specifying—

(a) the expected week of the child's birth;

(b) the length of the period of leave that, in accordance with regulation 5(1), the employee has chosen to take, and

(c) the date on which, in accordance with regulation 5(3) or (4), the employee has chosen that his period of leave should begin.

(2) The notice provided for in paragraph (1) must be given to the employer—

(a) in or before the 15th week before the expected week of the child's birth, or

(b) in a case where it was not reasonably practicable for the employee to give the notice in accordance with sub-paragraph (a), as soon as is reasonably practicable.

(3) Where the employer requests it, an employee must also give his employer a declaration, signed by the employee, to the effect that the purpose of his absence from work will be that specified in regulation 4(1) and that he satisfies the conditions of entitlement in regulation 4(2)(b) and (c).

(4) An employee who has given notice under paragraph (1) may vary the date he has chosen as the date on which his period of leave will begin, subject to paragraph (5) and provided that he gives his employer notice of the variation—

(a) where the variation is to provide for the employee's period of leave to begin on the date on which the child is born, at least 28 days before the first day of the expected week of the child's birth;

(b) where the variation is to provide for the employee's period of leave to begin on a date that is a specified number of days (or a different specified number of days) after the date on which the child is born, at least 28 days before the date falling that number of days after the first day of the expected week of the child's birth;

(c) where the variation is to provide for the employee's period of leave to begin on a predetermined date (or a different predetermined date), at least 28 days before that date,

or, if it is not reasonably practicable to give the notice at least 28 days before whichever day or date is relevant, as soon as is reasonably practicable.

(5) In a case where regulation 5(4) applies, an employee may only vary the date which he has chosen as the date on which his period of leave will begin by substituting a different predetermined date.

(6) In a case where—