Draft Regulations laid before Parliament under section 236(3) of the Employment Rights Act 1996, for approval by resolution of each House of Parliament. These draft Regulations supersede draft Maternity and Parental Leave Regulations laid before Parliament on 4th November 1999.

DRAFT STATUTORY INSTRUMENTS

1999 No.

TERMS AND CONDITIONS OF EMPLOYMENT

The Maternity and Parental Leave etc. Regulations 1999

Made - - - -	*1999*
Coming into force - -	*15th December 1999*

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 him by sections 47C(2) and (3), 71(1) to (3) and (6), 72(1) and (2), 73(1), (2), (4) and (7), 74(1), (3) and (4), 75(1), 76(1), (2) and (5), 77(1) and (4), 78(1), (2) and (7), 79(1) and (2) and 99(1)(**2**) of that Act and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

PART 1

GENERAL

Citation and commencement

1. These Regulations may be cited as the Maternity and Parental Leave etc. Regulations 1999 and shall come into force on 15th December 1999.

Interpretation

2.—(1) In these Regulations—

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

(**1**) 1996 c. 18; section 236(3) was amended by paragraph 42 of Part III 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 III of Schedule 4 to the Employment Relations Act 1999; sections 71 to 79 of the 1996 Act were substituted by section 7 and Part I of Schedule 4 to the 1999 Act, and section 99 of the 1996 Act was substituted by paragraph 16 of Part III of Schedule 4 to the 1999 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 to 73 is defined in section 75(2), and in section 99 it is defined in subsection (2) of that section.

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

"business" includes a trade or profession and includes any activity carried on by a body of persons (whether corporate or unincorporated);

"child" means a person under the age of eighteen;

"childbirth" means the birth of a living child or the birth of a child whether living or dead after 24 weeks of pregnancy;

"collective agreement" means a collective agreement within the meaning of section 178 of the Trade Union and Labour Relations (Consolidation) Act 1992(**3**), the trade union parties to which are independent trade unions within the meaning of section 5 of that Act;

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

"disability living allowance" means the disability living allowance provided for in Part III of the Social Security Contributions and Benefits Act 1992(**4**);

"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 of childbirth" means the week, beginning with midnight between Saturday and Sunday, in which it is expected that childbirth will occur, and "week of childbirth" means the week, beginning with midnight between Saturday and Sunday, in which childbirth occurs;

"job", in relation to an employee returning after additional maternity leave or parental leave, means the nature of the work which she is employed to do in accordance with her contract and the capacity and place in which she is so employed;

"ordinary maternity leave" means leave under section 71 of the 1996 Act;

"parental leave" means leave under regulation 13(1);

"parental responsibility" has the meaning given by section 3 of the Children Act 1989(**5**), and "parental responsibilities" has the meaning given by section 1(3) of the Children (Scotland) Act 1995(**6**);

"workforce agreement" means an agreement between an employer and his employees or their representatives in respect of which the conditions set out in Schedule 1 to these Regulations are satisfied.

(2) A reference in any provision of these Regulations to a period of continuous employment is to a period computed in accordance with Chapter I of Part XIV of the 1996 Act, as if that provision were a provision of that Act.

(3) 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.

(4) In these Regulations, unless the context otherwise requires,—

(a) a reference to a numbered regulation or schedule is to the regulation or schedule in these Regulations bearing that number;

(**3**) 1992 c. 52.
(**4**) 1992 c. 4.
(**5**) 1989 c. 41.
(**6**) 1995 c. 36.

(b) a reference in a regulation or schedule to a numbered paragraph is to the paragraph in that regulation or schedule bearing that number, and

(c) a reference in a paragraph to a lettered sub-paragraph is to the sub-paragraph in that paragraph bearing that letter.

Application

3.—(1) The provisions of Part II of these Regulations have effect only in relation to employees whose expected week of childbirth begins on or after 30th April 2000.

(2) Regulation 19 (protection from detriment) has effect only in relation to an act or failure to act which takes place on or after 15th December 1999.

(3) For the purposes of paragraph (2)—

(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.

(4) For the purposes of paragraph (3), 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.

(5) Regulation 20 (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 15th December 1999.

PART II

MATERNITY LEAVE

Entitlement to ordinary maternity leave

4.—(1) An employee is entitled to ordinary maternity leave provided that she satisfies the following conditions—

(a) at least 21 days before the date on which she intends her ordinary maternity leave period to start, or, if that is not reasonably practicable, as soon as is reasonably practicable, she notifies her employer of—

(i) her pregnancy;

(ii) the expected week of childbirth, and

(iii) the date on which she intends her ordinary maternity leave period to start,

and

(b) if requested to do so by her employer, she produces for his inspection a certificate from—

(i) a registered medical practitioner, or

(ii) a registered midwife,

stating the expected week of childbirth.

(2) The notification provided for in paragraph (1)(a)(iii)—

(a) shall be given in writing, if the employer so requests, and

(b) shall not specify a date earlier than the beginning of the eleventh week before the expected week of childbirth.

(3) Where, by virtue of regulation 6(1)(b), an employee's ordinary maternity leave period commences with the first day after the beginning of the sixth week before the expected week of childbirth on which she is absent from work wholly or partly because of pregnancy—

(a) paragraph (1) does not require her to notify her employer of the date specified in that paragraph, but

(b) (whether or not she has notified him of that date) she is not entitled to ordinary maternity leave unless she notifies him as soon as is reasonably practicable that she is absent from work wholly or partly because of pregnancy.

(4) Where, by virtue of regulation 6(2), an employee's ordinary maternity leave period commences with the day on which childbirth occurs—

(a) paragraph (1) does not require her to notify her employer of the date specified in that paragraph, but

(b) (whether or not she has notified him of that date) she is not entitled to ordinary maternity leave unless she notifies him as soon as is reasonably practicable after the birth that she has given birth.

(5) The notification provided for in paragraphs (3)(b) and (4)(b) shall be given in writing, if the employer so requests.

Entitlement to additional maternity leave

5. An employee who satisfies the following conditions is entitled to additional maternity leave—

(a) she is entitled to ordinary maternity leave, and

(b) she has, at the beginning of the eleventh week before the expected week of childbirth, been continuously employed for a period of not less than a year.

Commencement of maternity leave periods

6.—(1) Subject to paragraph (2), an employee's ordinary maternity leave period commences with the earlier of—

(a) the date which, in accordance with regulation 4(1)(a)(iii), she notifies to her employer as the date on which she intends her ordinary maternity leave period to start, and

(b) the first day after the beginning of the sixth week before the expected week of childbirth on which she is absent from work wholly or partly because of pregnancy.

(2) Where the employee's ordinary maternity leave period has not commenced by virtue of paragraph (1) when childbirth occurs, her ordinary maternity leave period commences with the day on which childbirth occurs.

(3) An employee's additional maternity leave period commences on the day after the last day of her ordinary maternity leave period.

Duration of maternity leave periods

7.—(1) Subject to paragraphs (2) and (5), an employee's ordinary maternity leave period continues for the period of eighteen weeks from its commencement, or until the end of the compulsory maternity leave period provided for in regulation 8 if later.

(2) Subject to paragraph (5), where any requirement imposed by or under any relevant statutory provision prohibits the employee from working for any period after the end of the period determined

under paragraph (1) by reason of her having recently given birth, her ordinary maternity leave period continues until the end of that later period.

(3) In paragraph (2), "relevant statutory provision" means a provision of—

(a) an enactment, or

(b) an instrument under an enactment,

other than a provision for the time being specified in an order under section 66(2) of the 1996 Act.

(4) Subject to paragraph (5), where an employee is entitled to additional maternity leave her additional maternity leave period continues until the end of the period of 29 weeks beginning with the week of childbirth.

(5) Where the employee is dismissed after the commencement of an ordinary or additional maternity leave period but before the time when (apart from this paragraph) that period would end, the period ends at the time of the dismissal.

Compulsory maternity leave

8. The prohibition in section 72 of the 1996 Act, against permitting an employee who satisfies prescribed conditions to work during a particular period (referred to as a "compulsory maternity leave period"), applies—

(a) in relation to an employee who is entitled to ordinary maternity leave, and

(b) in respect of the period of two weeks which commences with the day on which childbirth occurs.

Exclusion of entitlement to remuneration during ordinary maternity leave

9. For the purposes of section 71 of the 1996 Act, which includes provision excluding the entitlement of an employee who exercises her right to ordinary maternity leave to the benefit of terms and conditions of employment about remuneration, only sums payable to an employee by way of wages or salary are to be treated as remuneration.

Redundancy during maternity leave

10.—(1) This regulation applies where, during an employee's ordinary or additional maternity leave period, it is not practicable by reason of redundancy for her employer to continue to employ her under her existing contract of employment.

(2) Where there is a suitable available vacancy, the employee is entitled to be offered (before the end of her employment under her existing contract) alternative employment with her employer or his successor, or an associated employer, under a new contract of employment which complies with paragraph (3) (and takes effect immediately on the ending of her employment under the previous contract).

(3) The new contract of employment must be such that—

(a) the work to be done under it is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances, and

(b) its provisions as to the capacity and place in which she is to be employed, and as to the other terms and conditions of her employment, are not substantially less favourable to her than if she had continued to be employed under the previous contract.