STATUTORY RULES OF NORTHERN IRELAND

2010 No. 296

EMPLOYMENT

WORK AND FAMILIES

The Additional Paternity Leave (Adoptions from Overseas) Regulations (Northern Ireland) 2010

Made - - - - 9th September 2010

Coming into operation 5th October 2010

Approved by resolution of the Assembly on 9th November 2010

The Department for Employment and Learning(**1**) makes the following Regulations in exercise of the powers conferred by Articles 70C, 112BB, 112C, 112D**,** 112E and 131 of the Employment Rights (Northern Ireland) Order 1996(**2**) and now vested in it(**3**).

Citation and commencement

1. These Regulations may be cited as the Additional Paternity Leave (Adoptions from Overseas) Regulations (Northern Ireland) 2010 and shall come into operation on 5th October 2010.

Interpretation

2.—(1) In these Regulations—

"the 1996 Order" means the Employment Rights (Northern Ireland) Order 1996;

"additional paternity leave" means leave under regulation 4;

"adopter" means, in relation to a child adopted from overseas, 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;

(**1**) Formerly the Department of Higher and Further Education, Training and Employment; *See*2001 c. 15 (N.I.).

(**2**) S.I. 1996/1919 (N.I. 16). Article 70C was inserted by the Employment Relations (Northern Ireland) Order 1999 (S.I. 1999/2790 (N.I. 9)), Schedule 4, Part 3, paragraph 3. Further relevant amendments were made by the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2)), Schedule 2, paragraph 4(6) and (7) and by the Work and Families (Northern Ireland) Order 2006 (S.I.2006/1947 (N.I. 16)), Schedule 1, paragraph 29. Section 112BB was inserted by Article 6 of the Work and Families (Northern Ireland) Order 2006. Article 112BB applies to adoptions from overseas by virtue of the Employment Rights (Northern Ireland) Order 1996 (Application of Article 112BB to Adoptions from Overseas) Regulations (Northern Ireland) 2010 (S.R. 2010 No. 303). Articles 112C, 112D and 112E were inserted by Article 4 of the Employment (Northern Ireland) Order 2002 and subsequently amended by Article 7 of the Work and Families (Northern Ireland) Order 2006. Article 131 was substituted by the Employment Relations (Northern Ireland) Order 1999, Schedule 4, Part 3, paragraph 8, and amended by the Employment (Northern Ireland) Order 2002, Schedule 2, paragraph 4(13) and (14) and by the Work and Families (Northern Ireland) Order 2006, Schedule 1, paragraph 40.

(**3**) *See*S.R. 1999 No. 481 Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999.

"adoption from overseas" means the adoption of a child who enters Northern Ireland 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, and "adopted from overseas" shall be construed accordingly;

"adoption leave" means ordinary adoption leave under Article 107A of the 1996 Order or additional adoption leave under section 107B of that Order(**4**);

"child" means a person who is, or at the time of entering Northern Ireland was, under the age of eighteen;

"enter Northern Ireland" means enter Northern Ireland from outside the United Kingdom in connection with or for the purposes of adoption, and cognate expressions shall be construed accordingly;

"job", in relation to an employee returning after additional paternity leave, means the nature of the work which the employee is employed to do in accordance with the employee's contract of employment and the capacity and place in which the employee is so employed;

"maternity allowance" has the meaning given in section 35(1) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**5**);

"maternity leave" means ordinary maternity leave under Article 103 of the 1996 Order or additional maternity leave under Article 105 of that Order(**6**);

"official notification" means written notification, issued by or on behalf of the relevant central 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;

"parental leave" means leave under regulation 13(1) of the Maternity and Parental Leave etc Regulations (Northern Ireland) 1999(**7**);

"partner" in relation to a child's adopter, means a person (whether of a different sex or the same sex) who lives with the 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);

"processing", in relation to information, has the meaning given in section 1(1) of the Data Protection Act 1998(**8**);

"relevant central authority" means—

(a) in the case of an adopter to whom the Intercountry Adoption (Hague Convention) Regulations (Northern Ireland) 2003(**9**) apply, the Department of Health, Social Services and Public Safety;

(b) in any other case, the Secretary of State;

"statutory adoption pay" has the meaning given in section 167ZL of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**10**);

(**4**) Articles 107A and 107B were inserted by Article 3 of the Employment (Northern Ireland) Order 2002 and were amended by paragraphs 32 and 33 respectively of Schedule 1 to the Work and Families (Northern Ireland) Order 2006.
(**5**) 1992 c. 7. Subsection 1 was substituted by Article 50(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11) and was further amended by paragraph 2(a) of Schedule 1 to the Social Security Act (Northern Ireland) 2002 c. 10 (N.I.).
(**6**) Articles 103 and 105 were substituted by Schedule 4, Part 1 of the Employment Relations (Northern Ireland) Order 1999 and amended by Article 14 of the Employment (Northern Ireland) Order 2002 and by paragraphs 30 and 31 respectively of Schedule 1 to the Work and Families (Northern Ireland) Order 2006.
(**7**) S.R. 1999 No. 471; regulation 13(1) was amended by S.R. 2002 No. 135.
(**8**) 1998 c. 29.
(**9**) S.R. 2003 No. 16.
(**10**) Section 167ZL was inserted by Article 6 of the Employment (Northern Ireland) Order 2002.

"statutory maternity pay" has the meaning given in section 160(1) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992; and

"statutory leave" means leave provided for in Part 9 of the 1996 Order.

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

but do not include any other adoptive relationships.

(4) A reference in any provision of these Regulations to a period of continuous employment is to a period computed in accordance with Chapter 3 of Part 1 of the 1996 Order, as if that provision were a part of that Order.

Application

3.—(1) The provisions relating to additional paternity leave under regulation 4 have effect only in relation to an employee who is married to, or the civil partner or partner of, an adopter whose child enters Northern Ireland on or after 3rd April 2011.

(2) Regulation 23 (protection from detriment) has effect only in relation to an act or failure to act which takes place on or after 5th October 2010.

(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 is decided upon.

(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 the employer does an act inconsistent with doing the failed act, or

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

(5) Regulation 24 (unfair dismissal) has effect only in relation to dismissals where the effective date of termination (within the meaning of Article 129 of the 1996 Order(**11**)) falls on or after 5th October 2010.

Entitlement to additional paternity leave (adoptions from overseas)

4.—(1) An employee ("P") is entitled to be absent from work for the purpose of caring for a child ("C") if—

(a) P satisfies the conditions specified in paragraph (2);

(b) P has complied with the requirements in regulation 6 and, where applicable, regulation 7; and

(c) C's adopter ("A") satisfies the conditions specified in paragraph (4) and has signed the adopter declaration referred to in regulation 6.

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

(**11**) Article 129 was amended by S.R. 2002 No. 298, regulations 11, 16 to 18, Schedule 2, Part 1, paragraphs 2(1) and (8) and the Employment Relations (Northern Ireland) Order 1999, Schedule 9.

(a) has, before C entered Northern Ireland, been continuously employed with P's employer ("E") for a period of not less than 26 weeks either—

(i) ending with the week official notification was sent to A; or

(ii) commencing with the week in which P's employment with E began;

(b) remains in continuous employment with E until the week before the first week of P's additional paternity leave;

(c) is married to, or is the civil partner or the partner of A; and

(d) has, or expects to have, the main responsibility (apart from the responsibility of A) for the upbringing of C.

(3) In paragraph (2)(a)(i) and (ii), "week" means the period of seven days beginning with Sunday.

(4) The conditions referred to in paragraph (1)(c) are that A—

(a) is entitled by reference to the adoption of C to one or both of—

(i) adoption leave, or

(ii) Statutory Adoption Pay, and

(b) has, or is treated as having, returned to work under regulation 15.

(5) P's entitlement to leave under this section shall not be affected by the adoption from overseas of more than one child by the adopter as part of the same arrangement.

Options in respect of leave under regulation 4

5.—(1) P may choose to take leave under regulation 4 at any time within the period which begins 20 weeks after the date on which C entered Northern Ireland and ends 12 months after that date.

(2) The minimum period of leave which may be taken is two weeks and the maximum period is 26 weeks.

(3) The leave must be taken in multiples of complete weeks and must be taken as one continuous period.

(4) The leave may not be taken until eight weeks after the date of P's leave notice under regulation 6(1).

(5) This regulation is subject to regulation 14 (disrupted placement or death of child).

Notice and evidential requirements for leave under regulation 4

6.—(1) P must, not less than eight weeks before the start date chosen by P for the period of leave, give P's employer ("E")—

(a) a leave notice;

(b) an employee declaration; and

(c) an adopter declaration.

(2) In this regulation—

(a) "a leave notice" means a written notice specifying—

(i) the date on which A received official notification;

(ii) the date on which C entered Northern Ireland;

(iii) the dates which P has chosen in accordance with regulation 5 as the start date and end date for the period of leave.

(b) "an employee declaration" means a written declaration signed by P, stating—

(i) that the purpose of the period of leave will be to care for C, and

(ii) that P satisfies the conditions in regulation 4(2)(c) and (d).

(c) "an adopter declaration" means a written declaration by A stating—

(i) A's name and address;

(ii) the date A intends to return to work (within the meaning of regulation 15);

(iii) A's National Insurance number;

(iv) that P satisfies the conditions in regulation 4(2)(c); and

(v) that A consents to E processing such of A's information as is contained in the declaration.

(3) Where E makes a request within 28 days of receiving P's leave notice, P must, within 28 days of E's request, give E such of the following as E may request—

(a) a copy of the official notification relating to C;

(b) evidence of the date on which C entered Northern Ireland; and

(c) the name and address of A's employer (or, if A is self-employed, A's business address).

(4) After giving leave notice, P must give E written notice ("withdrawal notice") as soon as reasonably practicable if—

(a) P no longer satisfies the conditions in regulation 4(2)(c) or (d);

(b) A no longer satisfies the conditions in regulation 4(4).

(5) E may require that P take a period of leave where—

(a) P has given E withdrawal notice less than six weeks before the start date specified in P's leave notice, or, where applicable, last varied in accordance with regulation 7, and

(b) it is not reasonably practicable for E to accommodate the change in P's arrangements.

(6) Leave that E may require P to take under paragraph (5)—

(a) shall be treated as additional paternity leave for the purpose of these Regulations;

(b) shall start on the start date specified in P's leave notice, or, where applicable, last varied in accordance with regulation 7; and

(c) shall end no later than—

(i) six weeks after the date on which withdrawal notice was given to E, or

(ii) the end date specified in P's leave notice, or last varied in accordance with regulation 7,

whichever is the earlier.

(7) E may require P to remain on leave where—

(a) P has given E withdrawal notice after P's period of additional paternity leave has begun, and

(b) it is not reasonably practicable for E to accommodate the change in P's arrangements.

(8) The period for which E may require P to remain on leave under paragraph (7)—

(a) shall end no later than the earlier of—

(i) six weeks after the date on which P gave E withdrawal notice, or

(ii) the end date specified in P's leave notice or, where applicable, last varied in accordance with regulation 7; and

(b) shall be treated as additional paternity leave for the purpose of these Regulations.