

*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

2014 No. XXXX

TERMS AND CONDITIONS OF EMPLOYMENT

The Paternity and Adoption Leave
(Amendment) Regulations 2014

Made - - - - - ***

Coming into force

*for the purpose of
regulations 1, 2, 10, 12 and
14(1) and (3)*

1st October 2014

*for the purpose of
regulations 3, 4, 5(a), 5(b)
(partially), 6, 8 and 9*

1st December 2014

for all other purposes

5th April 2015

The Secretary of State, in exercise of the powers conferred by sections 47C(2)(aa) and (ab), 75A(1), and (3)(c), 75D(2), 80A(4A), 80B(4A), and (5)(ba), 80C(1)(c), 80D(1) and 99(1), (2) and (3)(aa) and (ab) of the Employment Rights Act 1996(1), makes the following Regulations.

Citation and commencement

1.—(1) These Regulations may be cited as the Paternity and Adoption Leave (Amendment) Regulations 2014.

(2) This regulation and regulations 2, 10, 12 and 14(1) and (3) come into force on 1st October 2014.

(3) Regulations 3, 4, 5(a), 5(b) (so far as it relates to new sub-paragraph (a) of new paragraph(1A), 6, 8 and 9 come into force on 1st December 2014.

(1) 1996 c. 18. Section 47C was inserted by the Employment Relations Act 1999 (c. 26), Schedule 4, Part 3, paragraphs 5 and 8. Paragraphs (aa) and (ab) were inserted into section 47C(2) by the Children and Families Act 2014 (c. 6), sections 127(2)(a) and 128(2)(a). Sections 75A and 75D were inserted by the Employment Act 2002 (c. 22), section 3. Sections 80A to 80D were inserted by the Employment Act 2002, section 1. Section 80A(4A) was inserted by the Children and Families Act 2014, section 118(6). Section 80B(4A) was inserted by the Children and Families Act 2014, section 118(7). Section 80B(5)(ba) was inserted by the Children and Families Act 2014, section 128(2)(b). Section 99 was substituted by the Employment Relations Act 1999, Schedule 4, Part 3, paragraphs 5 and 16. Subsection (3)(aa) was inserted by the Children and Families Act 2014, section 127(2)(b) and subsection (3)(ab) was inserted by the Children and Families Act 2014, section 128(2)(c).

(4) Regulations 5(b) (so far as it relates to new sub-paragraph (b) of new paragraph (1A)), 7, 11, 13 and 14(2) and (4) come into force on 5th April 2015.

Amendments to the Paternity and Adoption Leave Regulations 2002

2. The Paternity and Adoption Leave Regulations 2002(2) are amended as follows.
3. In regulation 2 (interpretation)—
 - (a) in paragraph (1)—
 - (i) in the definition of “adoption agency”, for “section 1(4) of the Adoption Act 1976(3)” substitute “section 2(1) of the Adoption and Children Act 2002(4)”;
 - (ii) after the definition of “paternity leave” insert—

““shared parental leave” means leave under section 75E or 75G of the 1996 Act(5)
 - (b) in paragraph (4)(b), for “regulation 11(2) of the Adoption Agencies Regulations 1983(6)” substitute “regulation 33(3)(a) of the Adoption Agencies Regulations 2005, regulation 28(3) of the Adoption Agencies (Wales) Regulations 2005(7)”.
4. In regulation 4 (entitlement to paternity leave: birth)—
 - (a) in paragraph (1), for “An” substitute “Subject to paragraph (1A), an”;
 - (b) after paragraph (1) insert—

“(1A) An employee is not entitled to be absent from work under paragraph (1) if the employee has taken any shared parental leave in respect of the child.”.
5. In regulation 8 (entitlement to paternity leave: adoption)—
 - (a) in paragraph (1), for “An” substitute “Subject to paragraph (1A), an”;
 - (b) after paragraph (1) insert—

“(1A) An employee is not entitled to be absent from work under paragraph (1) if the employee—

 - (a) has taken any shared parental leave in respect of the child; or
 - (b) has exercised a right to take time off under section 57ZJ of the 1996 Act in respect of the child.”.
6. In paragraph (1) of regulation 13 (right to return after paternity leave), for sub-paragraph (b) substitute—

“(b) the last of two or more consecutive periods of statutory leave which did not include any—

 - (i) period of parental leave of more than four weeks; or
 - (ii) period of statutory leave which when added to any other periods of statutory leave (excluding parental leave) taken in relation to the same child means that the total amount of statutory leave taken in relation to that child totals more than 26 weeks.”.
7. In regulation 15 (entitlement to ordinary adoption leave)—

(2) [2002/2788](#).

(3) [1976 c. 36](#). The Adoption Act 1976 was repealed by the Adoption and Children Act [2002 \(c. 38\)](#), section 139(3), Schedule 5, paragraph 1.

(4) [2002 c. 38](#).

(5) Sections 75E and 75G were inserted by the Children and Families Act 2014, section 117.

(6) [S.I. 1983/1964](#).

(7) [S.I. 2005/1313](#).

- (a) at the end of paragraph (2)(a) insert “and”;
- (b) omit paragraph (2)(b);
- (c) omit paragraph (3).

8. In paragraph (1)(b)(ii) of regulation 22 (disrupted placement in the course of adoption leave), for “section 30(3) of the Adoption Act 1976” substitute “sections 31 to 35 of the Adoption and Children Act 2002”.

9. In paragraph (1) of regulation 26 (right to return after adoption leave), for sub-paragraph (b) substitute—

- “(b) the last of two or more consecutive periods of statutory leave which did not include any—
 - (i) period of parental leave of more than four weeks; or
 - (ii) period of statutory leave which when added to any other periods of statutory leave (excluding parental leave) taken in relation to the same child means that the total amount of statutory leave taken in relation to that child totals more than 26 weeks.”.

10. In paragraph (1) of regulation 28 (protection from detriment), before sub-paragraph (a) insert—

- “(za) the employee took or sought to take time off under section 57ZE of the 1996 Act⁽⁸⁾;
- (zb) the employer believed that the employee was likely to take time off under section 57ZE of the 1996 Act.”.

11. In paragraph (1) of regulation 28 (protection from detriment), after sub-paragraph (zb)⁽⁹⁾ insert—

- “(zc) the employee took or sought to take time off under section 57ZJ or 57ZL of the 1996 Act⁽¹⁰⁾;
- (zd) the employer believed that the employee was likely to take time off under section 57ZJ or 57ZL of the 1996 Act.”.

12. In paragraph (3) of regulation 29 (unfair dismissal), before sub-paragraph (a) insert—

- “(za) the employee took or sought to take time off under section 57ZE of the 1996 Act;
- (zb) the employer believed that the employee was likely to take time off under section 57ZE of the 1996 Act.”.

13. In paragraph (3) of regulation 29 (unfair dismissal), after sub-paragraph (zb)⁽¹¹⁾ insert—

- “(zc) the employee took or sought to take time off under section 57ZJ or 57ZL of the 1996 Act;
- (zd) the employer believed that the employee was likely to take time off under section 57ZJ or 57ZL of the 1996 Act.”.

Transitional provision

14.—(1) Regulation 10 has effect only in relation to an act or failure to act which takes place on or after 1st October 2014.

⁽⁸⁾ Section 57ZE was inserted by the Children and Families Act 2014, section 127(1).

⁽⁹⁾ Sub-paragraph (zb) is inserted by regulation 10 of these Regulations.

⁽¹⁰⁾ Sections 57ZJ and 57ZL were inserted by the Children and Families Act 2014, section 128(1).

⁽¹¹⁾ Sub-paragraph (zb) is inserted by regulation 12 of these Regulations.

(2) Regulation 11 has effect only in relation to an act or failure to act which takes place on or after 5th April 2015.

(3) Regulation 12 has effect only in relation to dismissals where the effective date of termination (within the meaning of section 97 of the Employment Rights Act 1996⁽¹²⁾) falls on or after 1st October 2014.

(4) Regulation 13 has effect only in relation to dismissals where the effective date of termination (within the meaning of section 97 of the Employment Rights Act 1996) falls on or after 5th April 2015.

Date

Name
Parliamentary Under Secretary of State for
Employment Relations and Consumer Affairs
Department for Business, Innovation and Skills

(12) Section 97 was amended by the Employment Relations Act 1999, section 44, Schedule 9, paragraph 2, and [S.I. 2002/2034](#).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Paternity and Adoption Leave Regulations 2002 (S.I. 2002/2788).

The amendments made by the Regulations ensure that paternity leave cannot be taken in relation to a child where shared parental leave has already been taken in relation to that child. These Regulations ensure that an employee cannot take paternity leave if the employee has exercised a right to take paid time off to attend an adoption appointment in respect of the same child. The Regulations remove the current requirement for a qualifying period of service of 26 weeks before an employee is entitled to adoption leave.

The Regulations introduce protections for employees who suffer a detriment or are dismissed in relation to time off for ante-natal or adoption appointments.

The Regulations amend the provisions on the right to return after paternity or adoption leave.

A separate impact assessment has not been prepared for these Regulations. These Regulations are part of a package of legislative measures and the relevant impact assessment is the *Modern Workplaces: government response on flexible parental leave impact assessment* which was published in November 2012. A copy of that impact assessment can be obtained from the Department for Business, Innovation and Skills, Labour Market Directorate, 1 Victoria Street, London, SW1H 0ET. Copies have also been placed in the libraries of both Houses of Parliament.