
STATUTORY INSTRUMENTS

1999 No. 3312

The Maternity and Parental Leave etc. Regulations 1999

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;

“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(1), 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(2);

“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;

(1) 1992 c. 52.

(2) 1992 c. 4.

“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(3), and “parental responsibilities” has the meaning given by section 1(3) of the Children (Scotland) Act 1995(4);

“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;
- (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.

(3) 1989 c. 41.

(4) 1995 c. 36.

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.

Requirement to notify intention to return during a maternity leave period

11.—(1) An employee who intends to return to work earlier than the end of her ordinary maternity leave period or, where she is entitled to additional maternity leave, the end of her additional maternity leave period, shall give to her employer not less than 21 days' notice of the date on which she intends to return.

(2) If an employee attempts to return to work earlier than the end of a maternity leave period without complying with paragraph (1), her employer is entitled to postpone her return to a date such as will secure, subject to paragraph (3), that he has 21 days' notice of her return.

(3) An employer is not entitled under paragraph (2) to postpone an employee's return to work to a date after the end of the relevant maternity leave period.

(4) If an employee whose return to work has been postponed under paragraph (2) has been notified that she is not to return to work before the date to which her return was postponed, the employer is under no contractual obligation to pay her remuneration until the date to which her return was postponed if she returns to work before that date.

Requirement to notify intention to return after additional maternity leave

12.—(1) Where, not earlier than 21 days before the end of her ordinary maternity leave period, an employee who is entitled to additional maternity leave is requested in accordance with paragraph (3) by her employer to notify him in writing of—

- (a) the date on which childbirth occurred, and
 - (b) whether she intends to return to work at the end of her additional maternity leave period,
- the employee shall give the requested notification within 21 days of receiving the request.

(2) The provisions of regulations 19 and 20, in so far as they protect an employee against detriment or dismissal for the reason that she took additional maternity leave, do not apply in relation to an employee who has failed to notify her employer in accordance with paragraph (1).

(3) A request under paragraph (1) shall be—

(a) made in writing, and

(b) accompanied by a written statement—

(i) explaining how the employee may determine, in accordance with regulation 7(4), the date on which her additional maternity leave period will end, and

(ii) warning of the consequence, under paragraph (2), of failure to respond to the employer's request within 21 days of receiving it.

PART III

PARENTAL LEAVE

Entitlement to parental leave

13.—(1) An employee who—

(a) has been continuously employed for a period of not less than a year; and

(b) has, or expects to have, responsibility for a child,

is entitled, in accordance with these Regulations, to be absent from work on parental leave for the purpose of caring for that child.

(2) An employee has responsibility for a child, for the purposes of paragraph (1), if—

(a) he has parental responsibility or, in Scotland, parental responsibilities for the child; or

(b) he has been registered as the child's father under any provision of section 10(1) or 10A(1) of the Births and Deaths Registration Act 1953⁽⁵⁾ or of section 18(1) or (2) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965⁽⁶⁾.

(3) An employee is not entitled to parental leave in respect of a child born before 15th December 1999, except for a child who is adopted by the employee, or placed with the employee for adoption by him, on or after that date.

Extent of entitlement

14.—(1) An employee is entitled to thirteen weeks' leave in respect of any individual child.

(2) Where the period for which an employee is normally required, under his contract of employment, to work in the course of a week does not vary, a week's leave for the employee is a period of absence from work which is equal in duration to the period for which he is normally required to work.

(3) Where the period for which an employee is normally required, under his contract of employment, to work in the course of a week varies from week to week or over a longer period, or where he is normally required under his contract to work in some weeks but not in others, a week's leave for the employee is a period of absence from work which is equal in duration to the period calculated by dividing the total of the periods for which he is normally required to work in a year by 52.

⁽⁵⁾ 1953 c. 20; sections 10 and 10A were substituted by the Family Law Reform Act 1987 (c. 42), sections 24 and 25.

⁽⁶⁾ 1965 c. 49; section 18(1) was substituted, and section 18(2) amended, by the Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9).

(4) Where an employee takes leave in periods shorter than the period which constitutes, for him, a week's leave under whichever of paragraphs (2) and (3) is applicable in his case, he completes a week's leave when the aggregate of the periods of leave he has taken equals the period constituting a week's leave for him under the applicable paragraph.

When parental leave may be taken

- 15.** An employee may not exercise any entitlement to parental leave in respect of a child—
- (a) except in the cases referred to in paragraphs (b) to (d), after the date of the child's fifth birthday;
 - (b) in a case where the child is entitled to a disability living allowance, after the date of the child's eighteenth birthday;
 - (c) in a case where the child was placed with the employee for adoption by him (other than a case where paragraph (b) applies), after—
 - (i) the fifth anniversary of the date on which the placement began, or
 - (ii) the date of the child's eighteenth birthday,whichever is the earlier.
 - (d) in a case where—
 - (i) the provisions set out in Schedule 2 apply, and
 - (ii) the employee would have taken leave on or before a date or anniversary referred to in paragraphs (a) to (c) but for the fact that the employer postponed it under paragraph 6 of that Schedule,after the end of the period to which the leave was postponed.

Default provisions in respect of parental leave

- 16.** The provisions set out in Schedule 2 apply in relation to parental leave in the case of an employee whose contract of employment does not include a provision which—
- (a) confers an entitlement to absence from work for the purpose of caring for a child, and
 - (b) incorporates or operates by reference to all or part of a collective agreement or workforce agreement.

PART IV

PROVISIONS APPLICABLE IN RELATION TO MORE THAN ONE KIND OF ABSENCE

Application of terms and conditions during periods of leave

- 17.** An employee who takes additional maternity leave or parental leave—
- (a) is entitled, during the period of leave, to the benefit of her employer's implied obligation to her of trust and confidence and any terms and conditions of her employment relating to—
 - (i) notice of the termination of the employment contract by her employer;
 - (ii) compensation in the event of redundancy, or
 - (iii) disciplinary or grievance procedures;

- (b) is bound, during that period, by her implied obligation to her employer of good faith and any terms and conditions of her employment relating to—
 - (i) notice of the termination of the employment contract by her;
 - (ii) the disclosure of confidential information;
 - (iii) the acceptance of gifts or other benefits, or
 - (iv) the employee's participation in any other business.

Right to return after additional maternity leave or parental leave

18.—(1) An employee who takes parental leave for a period of four weeks or less, other than immediately after taking additional maternity leave, is entitled to return from leave to the job in which she was employed before her absence.

(2) An employee who takes additional maternity leave, or parental leave for a period of more than four weeks, is entitled to return from leave to the job in which she was employed before her absence, or, if it is not reasonably practicable for the employer to permit her to return to that job, to another job which is both suitable for her and appropriate for her to do in the circumstances.

(3) An employee who takes parental leave for a period of four weeks or less immediately after additional maternity leave is entitled to return from leave to the job in which she was employed before her absence unless—

- (a) it would not have been reasonably practicable for her to return to that job if she had returned at the end of her additional maternity leave period, and
- (b) it is not reasonably practicable for the employer to permit her to return to that job at the end of her period of parental leave;

otherwise, she is entitled to return to another job which is both suitable for her and appropriate for her to do in the circumstances.

(4) Paragraphs (2) and (3) do not apply where regulation 10 applies.

(5) An employee's right to return under paragraph (1), (2) or (3) is to return—

- (a) on terms and conditions as to remuneration not less favourable than those which would have been applicable to her had she not been absent from work at any time since—
 - (i) in the case of an employee returning from additional maternity leave (or parental leave taken immediately after additional maternity leave), the commencement of the ordinary maternity leave period which preceded her additional maternity leave period, or
 - (ii) in the case of an employee returning from parental leave (other than parental leave taken immediately after additional maternity leave), the commencement of the period of parental leave;
- (b) with her seniority, pension rights and similar rights as they would have been if the period or periods of her employment prior to her additional maternity leave period, or (as the case may be) her period of parental leave, were continuous with her employment following her return to work (but subject, in the case of an employee returning from additional maternity leave, to the requirements of paragraph 5 of Schedule 5 to the Social Security Act 1989(7) (equal treatment under pension schemes: maternity)), and
- (c) otherwise on terms and conditions not less favourable than those which would have been applicable to her had she not been absent from work after the end of her ordinary maternity leave period or (as the case may be) during her period of parental leave.

Protection from detriment

19.—(1) An employee is entitled under section 47C of the 1996 Act not to be subjected to any detriment by any act, or any deliberate failure to act, by her employer done for any of the reasons specified in paragraph (2).

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

- (a) is pregnant;
- (b) has given birth to a child;
- (c) is the subject of a relevant requirement, or a relevant recommendation, as defined by section 66(2) of the 1996 Act;
- (d) took, sought to take or availed herself of the benefits of, ordinary maternity leave;
- (e) took or sought to take—
 - (i) additional maternity leave;
 - (ii) parental leave, or
 - (iii) time off under section 57A of the 1996 Act;
- (f) declined to sign a workforce agreement for the purpose of these Regulations, or
- (g) being—
 - (i) a representative of members of the workforce for the purposes of Schedule 1, or
 - (ii) a candidate in an election in which any person elected will, on being elected, become such a representative,performed (or proposed to perform) any functions or activities as such a representative or candidate.

(3) For the purposes of paragraph (2)(d), a woman avails herself of the benefits of ordinary maternity leave if, during her ordinary maternity leave period, she avails herself of the benefit of any of the terms and conditions of her employment preserved by section 71 of the 1996 Act during that period.

(4) Paragraph (1) does not apply in a case where the detriment in question amounts to dismissal within the meaning of Part X of the 1996 Act.

(5) Paragraph (2)(b) only applies where the act or failure to act takes place during the employee's ordinary or additional maternity leave period.

(6) For the purposes of paragraph (5)—

- (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.

(7) For the purposes of paragraph (6), 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 were to be done.

Unfair dismissal

20.—(1) An employee who is dismissed is entitled under section 99 of the 1996 Act to be regarded for the purposes of Part X of that Act as unfairly dismissed if—

- (a) the reason or principal reason for the dismissal is of a kind specified in paragraph (3), or

- (b) the reason or principal reason for the dismissal is that the employee is redundant, and regulation 10 has not been complied with.
- (2) An employee who is dismissed shall also be regarded for the purposes of Part X of the 1996 Act as unfairly dismissed if—
- (a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee was redundant;
- (b) it is shown that the circumstances constituting the redundancy applied equally to one or more employees in the same undertaking who held positions similar to that held by the employee and who have not been dismissed by the employer, and
- (c) it is shown that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was a reason of a kind specified in paragraph (3).
- (3) The kinds of reason referred to in paragraphs (1) and (2) are reasons connected with—
- (a) the pregnancy of the employee;
- (b) the fact that the employee has given birth to a child;
- (c) the application of a relevant requirement, or a relevant recommendation, as defined by section 66(2) of the 1996 Act;
- (d) the fact that she took, sought to take or availed herself of the benefits of, ordinary maternity leave;
- (e) the fact that she took or sought to take—
- (i) additional maternity leave;
- (ii) parental leave, or
- (iii) time off under section 57A of the 1996 Act;
- (f) the fact that she declined to sign a workforce agreement for the purposes of these Regulations, or
- (g) the fact that the employee, being—
- (i) a representative of members of the workforce for the purposes of Schedule 1, or
- (ii) a candidate in an election in which any person elected will, on being elected, become such a representative,
- performed (or proposed to perform) any functions or activities as such a representative or candidate.
- (4) Paragraphs (1)(b) and (3)(b) only apply where the dismissal ends the employee's ordinary or additional maternity leave period.
- (5) Paragraph (3) of regulation 19 applies for the purposes of paragraph (3)(d) as it applies for the purpose of paragraph (2)(d) of that regulation.
- (6) Paragraph (1) does not apply in relation to an employee if—
- (a) immediately before the end of her additional maternity leave period (or, if it ends by reason of dismissal, immediately before the dismissal) the number of employees employed by her employer, added to the number employed by any associated employer of his, did not exceed five, and
- (b) it is not reasonably practicable for the employer (who may be the same employer or a successor of his) to permit her to return to a job which is both suitable for her and appropriate for her to do in the circumstances or for an associated employer to offer her a job of that kind.
- (7) Paragraph (1) does not apply in relation to an employee if—

- (a) it is not reasonably practicable for a reason other than redundancy for the employer (who may be the same employer or a successor of his) to permit her to return to a job which is both suitable for her and appropriate for her to do in the circumstances;
- (b) an associated employer offers her a job of that kind, and
- (c) she accepts or unreasonably refuses that offer.

(8) Where on a complaint of unfair dismissal any question arises as to whether the operation of paragraph (1) is excluded by the provisions of paragraph (6) or (7), it is for the employer to show that the provisions in question were satisfied in relation to the complainant.

Contractual rights to maternity or parental leave

21.—(1) This regulation applies where an employee is entitled to—

- (a) ordinary maternity leave;
- (b) additional maternity leave, or
- (c) parental leave,

(referred to in paragraph (2) as a “statutory right”) and also to a right which corresponds to that right and which arises under the employee’s contract of employment or otherwise.

(2) In a case where this regulation applies—

- (a) the employee may not exercise the statutory right and the corresponding right separately but may, in taking the leave for which the two rights provide, take advantage of whichever right is, in any particular respect, the more favourable, and
- (b) the provisions of the 1996 Act and of these Regulations relating to the statutory right apply, subject to any modifications necessary to give effect to any more favourable contractual terms, to the exercise of the composite right described in sub-paragraph (a) as they apply to the exercise of the statutory right.

Calculation of a week’s pay

22. Where—

- (a) under Chapter II of part XIV of the 1996 Act, the amount of a week’s pay of an employee falls to be calculated by reference to the average rate of remuneration, or the average amount of remuneration, payable to the employee in respect of a period of twelve weeks ending on a particular date (referred to as “the calculation date”);
- (b) during a week in that period, the employee was absent from work on ordinary or additional maternity leave or parental leave, and
- (c) remuneration is payable to the employee in respect of that week under her contract of employment, but the amount payable is less than the amount that would be payable if she were working,

that week shall be disregarded for the purpose of the calculation and account shall be taken of remuneration in earlier weeks so as to bring up to twelve the number of weeks of which account is taken.

10th December 1999

Stephen Byers
Secretary of State for Trade and Industry