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STATUTORY INSTRUMENTS

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**2010 No. 1055**

**The Additional Paternity Leave Regulations 2010**

**PART 1**

**GENERAL**

**Citation, commencement and extent**

1. These Regulations may be cited as the Additional Paternity Leave Regulations 2010 and shall come into force on 6th April 2010.

**Interpretation**

2.—(1) In these Regulations—

“the 1996 Act” means the Employment Rights Act 1996;

“additional paternity leave” means leave under regulation 4 or regulation 14;

“adopter”, in relation to a child, means a person who has been matched with the child for adoption and who has elected to take adoption leave in order to care for the child;

“adoption agency” has the meaning given, in relation to England and Wales, by section 2 of the Adoption and Children Act 2002<sup>(1)</sup>, and in relation to Scotland, by section 119(1) of the Adoption and Children (Scotland) Act 2007<sup>(2)</sup>;

“adoption leave” means ordinary adoption leave under section 75A of the 1996 Act or additional adoption leave under section 75B of that Act<sup>(3)</sup>;

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

“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;

“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 Act 1992<sup>(4)</sup>;

“maternity leave” means ordinary maternity leave under section 71 of the 1996 Act or additional maternity leave under section 73 of that Act<sup>(5)</sup>;

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(1) 2002 c.38.

(2) 2007 asp. 4.

(3) Sections 75A and 75B were inserted by section 3 of the Employment Act 2002 and were amended by paragraphs 33 and 34 respectively of Schedule 1 to the Work and Families Act 2006.

(4) 1992. c.4. Sub-section 1 was substituted by section 53(1) of the Welfare Reforms and Persons Act 1999 and was further amended by Schedule 7, paragraphs 2, 4(1) and (2) of the Employment Act 2002.

(5) Sections 71 and 73 were substituted by Schedule 4 Part 1 of the Employment Relations Act 1999 and amended by section 17 of the Employment Act 2002 and by paragraphs 31 and 32 respectively of the Work and Families Act 2006.

“parental leave” means leave under regulation 13(1) of the Maternity and Parental Leave etc Regulations 1999<sup>(6)</sup>;

“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);

“processing”, in relation to information, has the meaning given in section 1(1) of the Data Protection Act 1998<sup>(7)</sup>;

“statutory adoption pay” has the meaning given in section 171ZL of the Social Security Contributions and Benefits Act 1992<sup>(8)</sup>;

“statutory maternity pay” has the meaning given in section 164(1) of the Social Security Contributions and Benefits Act 1992; and

“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 the child’s 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;
- (b) a person is notified of having been matched with a child on the date on which the person receives notification of the agency’s decision, under regulation 33(3)(a) of the Adoption Agencies Regulations 2005<sup>(9)</sup>, regulation 28(3) of the Adoption Agencies (Wales) Regulations 2005<sup>(10)</sup> or regulation 8(5) of the Adoption Agencies (Scotland) Regulations 2009<sup>(11)</sup>.

(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 part of that Act.

## Application

3.—(1) The provisions relating to additional paternity leave under regulation 4 have effect only in relation to children whose expected week of birth begins on or after 3rd April 2011.

(2) The provisions relating to additional paternity leave under regulation 14 have effect only in relation to children matched with a person who is notified of having been matched on or after 3rd April 2011.

(3) Regulation 33 (protection from detriment) has effect only in relation to an act or failure to act which takes place on or after 6th April 2010.

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

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<sup>(6)</sup> S.I. 1999/3312, amended by S.I. 2001/410, there are other amending instruments but none is relevant.

<sup>(7)</sup> 1998 c.29.

<sup>(8)</sup> Section 171ZL was inserted by section 4 of the Employment Act 2002 and was amended by S.I. 2006/2012 article 3.

<sup>(9)</sup> S.I. 2005/389, to which there are amendments not relevant to these Regulations.

<sup>(10)</sup> S.I. 2005/1313.

<sup>(11)</sup> S.S.I. 2009/154.

- (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.
- (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 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.
- (6) Regulation 34 (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<sup>(12)</sup>) falls on or after 6th April 2010.

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(12) Section 97 was amended by [SI 2002/2034](#), regulations 11, 18-20, Schedule 2, Part 1, paragraphs 3(1) and (8) and the Employment Relations Act 1999, Schedule 4, Part 3, paragraphs 5, 14 and Schedule 9.