

2006 No. 373

EMPLOYMENT

WORK AND FAMILIES

**The Paternity and Adoption Leave (Amendment) Regulations
(Northern Ireland) 2006**

Made - - - - - *15th September 2006*

Coming into operation - - - - - *1st October 2006*

The Department for Employment and Learning(a), in exercise of the powers conferred by Articles 70C(2)(b), 107A(2) and (2A)(c), 107B(2) and (3)(d), 107C, 107D(e), 131(1)(f) and 251(6)(g) of the Employment Rights (Northern Ireland) Order 1996(h), and now vested in it(i), makes the following Regulations:

Citation, commencement and interpretation

1. These Regulations may be cited as the Paternity and Adoption Leave (Amendment) Regulations 2006 and shall come into operation on 1st October 2006.

2. In these Regulations “the principal Regulations” means the Paternity and Adoption Leave Regulations (Northern Ireland) 2002(j).

Application

3.—(1) The amendments to the principal Regulations provided for in these Regulations have effect only in relation to an employee with whom a child is expected to be placed for adoption, where the placement is expected to occur on or after 1st April 2007. For the purposes of this paragraph, the date on which the child is actually placed for adoption is immaterial.

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- (a) Formerly the Department of Higher and Further Education, Training and Employment; *See* 2001 c.15 (N.I.)
- (b) Article 70C was inserted by paragraph 3 of Part III of Schedule 4 to the Employment Relations (Northern Ireland) Order 1999 (S.I. 1999/2790 (N.I. 9)) (“the 1999 Order”) and paragraph (2) was amended by Article 17 and sub-paragraphs (6) and (7) of paragraph 4 of Schedule 2 to the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2)) (“the 2002 Order”). Further amendments which are not relevant to these Regulations have been made to Article 70C by paragraph 29 of Schedule 1 to the Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947 (N.I. 16)) (“the 2006 Order”). The word “prescribed” in Article 70C is defined in paragraph (2) of that Article
- (c) Article 107A was inserted by Article 3 of the 2002 Order and paragraph (2A) was inserted by paragraph 32 of Schedule 1 to the 2006 Order
- (d) Article 107B(2) was inserted by Article 3 of the 2002 Order and a new paragraph (3) was substituted by paragraph 33 of Schedule 1 to the 2006 Order
- (e) Articles 107C and 107D were inserted by Article 3 of the 2002 Order
- (f) Article 131 was substituted by paragraph 8 of Part III of Schedule 4 to the 1999 Order
- (g) Article 251 was amended by paragraph 16 of Part III of Schedule 4 to the 1999 Order, sub-paragraph (19) of paragraph 4 of Schedule 2 to the 2002 Order and sub-paragraph (10) of paragraph 2 of Schedule 5 to the Employment (Northern Ireland) Order 2003 (S.I. 2003/2902 (N.I. 15))
- (h) S.I. 1996/1919 (N.I. 16)
- (i) *See* S.R. 1999 No. 481 Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999
- (j) S.R. 2002 No. 377

(2) The amendments to the principal Regulations applied to adoption from overseas by virtue of and as modified by the Paternity and Adoption Leave (Adoption from Overseas) Regulations (Northern Ireland) 2003(a) have effect only where the adopter's child enters Northern Ireland on or after 1st April 2007.

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

“adopter”, in relation to a child, means 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;

“adoption from overseas” means the adoption of the 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;

“enters Northern Ireland” means enters Northern Ireland from outside the United Kingdom in connection with or for the purposes of adoption.

Amendments to the principal Regulations

4. The principal Regulations shall be amended as follows.

5. In regulation 2(1) (interpretation), after the definition of “paternity leave” there shall be inserted the following definitions—

““statutory adoption leave” means ordinary adoption leave and additional adoption leave;

“statutory adoption leave period” means the period during which the adopter is on statutory adoption leave;”.

6. After regulation 21 insert—

“Work during adoption leave period

21A.—(1) An employee may carry out up to 10 days' work for his employer during his statutory adoption leave period without bringing his statutory adoption leave to an end.

(2) For the purposes of this regulation, any work carried out on any day shall constitute a day's work.

(3) Subject to paragraph (4), for the purposes of this regulation, work means any work done under the contract of employment and may include training or any activity undertaken for the purposes of keeping in touch with the workplace.

(4) Reasonable contact from time to time between an employee and his employer which either party is entitled to make during a statutory adoption leave period (for example to discuss an employee's return to work) shall not bring that period to an end.

(5) This regulation does not confer any right on an employer to require that any work be carried out during the statutory adoption leave period, nor any right on an employee to work during the statutory adoption leave period.

(6) Any days' work carried out under this regulation shall not have the effect of extending the total duration of the statutory adoption leave period.”.

7. In regulation 25 (requirement to notify intention to return during adoption leave period)—

(1) in paragraph (1) for “28 days” substitute “8 weeks”;

(2) in paragraph (2) for “28 days” substitute “8 weeks”;

(3) after paragraph (2) insert—

(a) S.R. 2003 No. 222

“(2A) An employee who complies with his obligations in paragraph (1) or whose employer has postponed his return in the circumstances described in paragraph (2), and who then decides to return to work—

- (a) earlier than the original return date, must give his employer not less than 8 weeks’ notice of the date on which he now intends to return;
- (b) later than the original return date, must give his employer not less than 8 weeks’ notice ending with the original return date.

(2B) In paragraph (2A) the “original return date” means the date which the employee notified to his employer as the date of his return to work under paragraph (1), or the date to which his return was postponed by his employer under paragraph (2).”.

8. In regulation 28 (protection from detriment)—

(1) in paragraph (1)(b), after “additional adoption leave” omit “, or” and insert “;”;

(2) after paragraph (1)(b) insert—

“(bb) the employee undertook, considered undertaking or refused to undertake work in accordance with regulation 21A; or”.

9. In regulation 29 (unfair dismissal)—

(1) at the end of paragraph (3)(b), after “additional adoption leave” omit “, or” and insert “;”;

(2) after paragraph (3)(b) insert—

“(bb) the employee undertook, considered undertaking or refused to undertake work in accordance with regulation 21A; or”;

(3) omit paragraph (4);

(4) in paragraph (6) for “paragraphs (4) or (5),” substitute “paragraph (5),”.

Sealed with the Official Seal of the Department for Employment and Learning on 15th September 2006.



D. S. S. McAuley
A senior officer of the
Department for Employment and Learning

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend provisions relating to adoption leave in the Paternity and Adoption Leave Regulations (Northern Ireland) 2002 (S.R. 2002 No. 377) (“the principal Regulations”).

The amendments have effect in relation to an employee whose child is expected to be placed with him for adoption on or after 1st April 2007 or, in cases of overseas adoption as defined in the Paternity and Adoption Leave (Adoption from Overseas) Regulations (Northern Ireland) 2003 (S.R. 2003 No. 222) (“the 2003 Regulations”), an adopter whose child enters Northern Ireland on or after the 1st April 2007.

As the principal Regulations apply to overseas adoptions subject to the modifications set out in the 2003 Regulations, and the changes being made to the principal Regulations do not affect these modifications, they shall apply to adoptions from overseas without additional amendments being required to the 2003 Regulations.

Regulation 5 inserts the definitions of “statutory adoption leave” and “statutory adoption leave period”.

Regulation 6 inserts a new regulation 21A which enables an employee on adoption leave to agree with his employer to work for up to 10 days during the statutory adoption leave period without bringing that period to an end as a result of carrying out the work. For the purposes of that new provision, “work” may include training or any other activity undertaken to assist the employee in keeping in touch with the workplace. The new provision also sets out that reasonable contact which employers and employees are entitled to have with each other during the adoption leave period does not bring that period to an end.

Any work carried out under the new provision must be by agreement between the parties and there is no right for an employer to demand that an employee undertake any such work, nor for an employee to do such work. The regulation also provides that any such days’ work shall not have the effect of extending the adoption leave period.

Regulation 7 extends the period of notice which the employee is required to give to the employer of his intention to return to work earlier than the end of his additional adoption leave from 28 days to 8 weeks. The time period is similarly extended from 28 days to 8 weeks in circumstances where the employer delays the employee’s return due to the employee’s failure to comply with the notification requirements in regulation 25(1).

Regulation 7 also sets out notification requirements where the employee changes his mind as to his intended return date. If, after notifying the employer that he intends to return before the end of his statutory adoption leave period on return date X, he then decides to return on an earlier date, he is required to give 8 weeks’ notice of the new return date. If he intends to return later than date X, he will be required to give 8 weeks’ notice ending with date X.

Regulation 8 adds undertaking, considering undertaking or refusing to undertake any work in accordance with new regulation 21A to the list of reasons for which an employee is entitled to protection from detriment under Article 70C of the Employment Rights (Northern Ireland) Order 1996.

Regulation 9 similarly adds undertaking, considering undertaking or refusing to undertake any work in accordance with new regulation 21A to the list of reasons for which an employee, if dismissed for such a reason, is unfairly dismissed under Article 131 of the Employment Rights (Northern Ireland) Order 1996. The regulation also removes the small employers’ exemption in order to clarify that the employee has a right to return to the same or a similar job regardless of the size of the organisation for which the employee works. If he is prevented from so doing in these circumstances his dismissal will be automatically unfair under Article 131 of the Employment Rights (Northern Ireland) Order 1996.

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