

Draft Regulations laid before Parliament under section 236(3) of the Employment Rights Act 1996, for approval by resolution of each House of Parliament. These draft Regulations supersede draft Maternity and Parental Leave Regulations laid before Parliament on 4th November 1999.

DRAFT STATUTORY INSTRUMENTS

1999 No.

TERMS AND CONDITIONS OF EMPLOYMENT

The Maternity and Parental Leave etc. Regulations 1999

Made - - - - 1999
Coming into force - - 15th December 1999

Whereas a draft of the following Regulations was laid before Parliament in accordance with section 236(3) of the Employment Rights Act 1996(1) and approved by a resolution of each House of Parliament:

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by sections 47C(2) and (3), 71(1) to (3) and (6), 72(1) and (2), 73(1), (2), (4) and (7), 74(1), (3) and (4), 75(1), 76(1), (2) and (5), 77(1) and (4), 78(1), (2) and (7), 79(1) and (2) and 99(1)(2) of that Act and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

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;

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- (1) 1996 c. 18; section 236(3) was amended by paragraph 42 of Part III of Schedule 4 to the Employment Relations Act 1999 (c. 26).
- (2) Section 47C of the Employment Rights Act 1996 was inserted by paragraph 8 of Part III of Schedule 4 to the Employment Relations Act 1999; sections 71 to 79 of the 1996 Act were substituted by section 7 and Part I of Schedule 4 to the 1999 Act, and section 99 of the 1996 Act was substituted by paragraph 16 of Part III of Schedule 4 to the 1999 Act. The word “prescribed” in section 47C of the 1996 Act is defined in subsection (2) of that section; the same word in sections 71 to 73 is defined in section 75(2), and in section 99 it is defined in subsection (2) of that section.

“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⁽³⁾, 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⁽⁴⁾;

“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;

“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⁽⁵⁾, and “parental responsibilities” has the meaning given by section 1(3) of the Children (Scotland) Act 1995⁽⁶⁾;

“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;

(3) 1992 c. 52.

(4) 1992 c. 4.

(5) 1989 c. 41.

(6) 1995 c. 36.

- (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.

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⁽⁷⁾ or of section 18(1) or (2) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965⁽⁸⁾.

(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.

(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.

⁽⁷⁾ 1953 c. 20; sections 10 and 10A were substituted by the Family Law Reform Act 1987 (c. 42), sections 24 and 25.

⁽⁸⁾ 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).

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.—(1) 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⁽⁹⁾ (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 by 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

⁽⁹⁾ 1989 c. 24.

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.

SCHEDULE 1

Regulation 2(1)

WORKFORCE AGREEMENTS

1. An agreement is a workforce agreement for the purposes of these Regulations if the following conditions are satisfied—

- (a) the agreement is in writing;
- (b) it has effect for a specified period not exceeding five years;
- (c) it applies either—
 - (i) to all of the relevant members of the workforce, or
 - (ii) to all of the relevant members of the workforce who belong to a particular group;
- (d) the agreement is signed—
 - (i) in the case of an agreement of the kind referred to in sub-paragraph (c)(i), by the representatives of the workforce, and in the case of an agreement of the kind referred to in sub-paragraph (c)(ii), by the representatives of the group to which the agreement applies (excluding, in either case, any representative not a relevant member of the workforce on the date on which the agreement was first made available for signature), or
 - (ii) if the employer employed 20 or fewer employees on the date referred to in sub-paragraph (d)(i), either by the appropriate representatives in accordance with that sub-paragraph or by the majority of the employees employed by him;

and

- (e) before the agreement was made available for signature, the employer provided all the employees to whom it was intended to apply on the date on which it came into effect with copies of the text of the agreement and such guidance as those employees might reasonably require in order to understand it in full.

2. For the purposes of this Schedule—

“a particular group” is a group of the relevant members of a workforce who undertake a particular function, work at a particular workplace or belong to a particular department or unit within their employer’s business;

“relevant members of the workforce” are all of the employees employed by a particular employer, excluding any employee whose terms and conditions of employment are provided for, wholly or in part, in a collective agreement;

“representatives of the workforce” are employees duly elected to represent the relevant members of the workforce, “representatives of the group” are employees duly elected to represent the members of a particular group, and representatives are “duly elected” if the election at which they were elected satisfied the requirements of paragraph 3 of this Schedule.

3. The requirements concerning elections referred to in paragraph 2 are that—

- (a) the number of representatives to be elected is determined by the employer;
- (b) the candidates for election as representatives of the workforce are relevant members of the workforce, and the candidates for election as representatives of a group are members of the group;
- (c) no employee who is eligible to be a candidate is unreasonably excluded from standing for election;
- (d) all the relevant members of the workforce are entitled to vote for representatives of the workforce, and all the members of a particular group are entitled to vote for representatives of the group;

- (e) the employees entitled to vote may vote for as many candidates as there are representatives to be elected, and
- (f) the election is conducted so as to secure that—
 - (i) so far as is reasonably practicable, those voting do so in secret, and
 - (ii) the votes given at the election are fairly and accurately counted.

SCHEDULE 2

Regulation 16

DEFAULT PROVISIONS IN RESPECT OF PARENTAL LEAVE

Conditions of entitlement

1. An employee may not exercise any entitlement to parental leave unless—
 - (a) he has complied with any request made by his employer to produce for the employer's inspection evidence of his entitlement, of the kind described in paragraph 2;
 - (b) he has given his employer notice, in accordance with whichever of paragraphs 3 to 5 is applicable, of the period of leave he proposes to take, and
 - (c) in a case where paragraph 6 applies, his employer has not postponed the period of leave in accordance with that paragraph.
2. The evidence to be produced for the purpose of paragraph 1(a) is such evidence as may reasonably be required of—
 - (a) the employee's responsibility or expected responsibility for the child in respect of whom the employee proposes to take parental leave;
 - (b) the child's date of birth or, in the case of a child who was placed with the employee for adoption, the date on which the placement began, and
 - (c) in a case where the employee's right to exercise an entitlement to parental leave under regulation 15, or to take a particular period of leave under paragraph 7, depends upon whether the child is entitled to a disability living allowance, the child's entitlement to that allowance.

Notice to be given to employer

3. Except in a case where paragraph 4 or 5 applies, the notice required for the purpose of paragraph 1(b) is notice which—
 - (a) specifies the dates on which the period of leave is to begin and end, and
 - (b) is given to the employer at least 21 days before the date on which that period is to begin.
4. Where the employee is the father of the child in respect of whom the leave is to be taken, and the period of leave is to begin on the date on which the child is born, the notice required for the purpose of paragraph 1(b) is notice which—
 - (a) specifies the expected week of childbirth and the duration of the period of leave, and
 - (b) is given to the employer at least 21 days before the beginning of the expected week of childbirth.
5. Where the child in respect of whom the leave is to be taken is to be placed with the employee for adoption by him and the leave is to begin on the date of the placement, the notice required for the purpose of paragraph 1(b) is notice which—

- (a) specifies the week in which the placement is expected to occur and the duration of the period of leave, and
- (b) is given to the employer at least 21 days before the beginning of that week, or, if that is not reasonably practicable, as soon as is reasonably practicable.

Postponement of leave

6. An employer may postpone a period of parental leave where—
- (a) neither paragraph 4 nor paragraph 5 applies, and the employee has accordingly given the employer notice in accordance with paragraph 3;
 - (b) the employer considers that the operation of his business would be unduly disrupted if the employee took leave during the period identified in his notice;
 - (c) the employer agrees to permit the employee to take a period of leave—
 - (i) of the same duration as the period identified in the employee's notice, and
 - (ii) beginning on a date determined by the employer after consulting the employee, which is no later than six months after the commencement of that period;
 - (d) the employer gives the employee notice in writing of the postponement which—
 - (i) states the reason for it, and
 - (ii) specifies the dates on which the period of leave the employer agrees to permit the employee to take will begin and end,
- and
- (e) that notice is given to the employee not more than seven days after the employee's notice was given to the employer.

Minimum periods of leave

7. An employee may not take parental leave in a period other than the period which constitutes a week's leave for him under regulation 14 or a multiple of that period, except in a case where the child in respect of whom leave is taken is entitled to a disability living allowance.

Maximum annual leave allowance

8. An employee may not take more than four weeks' leave in respect of any individual child during a particular year.

9. For the purposes of paragraph 8, a year is the period of twelve months beginning—
- (a) except where sub-paragraph (b) applies, on the date on which the employee first became entitled to take parental leave in respect of the child in question, or
 - (b) in a case where the employee's entitlement has been interrupted at the end of a period of continuous employment, on the date on which the employee most recently became entitled to take parental leave in respect of that child,

and each successive period of twelve months beginning on the anniversary of that date.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, together with provisions inserted into the Employment Rights Act 1996 (“the 1996 Act”) by the Employment Relations Act 1999, confer new rights to maternity and parental leave. The provisions relating to parental leave implement Council Directive [96/34/EC](#) on the framework agreement on parental leave (OJ No.L145, 19.6.96, p.4).

The provisions relating to ordinary maternity leave are derived from the maternity leave provisions in sections 72-78 of the 1996 Act as originally enacted, although the period of leave provided for is 18 weeks (reg.7(1)) rather than 14 weeks as under the Act. The provisions relating to additional maternity leave replace sections 79–85 of the 1996 Act as originally enacted; the new provisions differ principally in that the new right is a right to leave for a period of 29 weeks from the beginning of the week of childbirth (reg.7(4)) rather than a right to return within such a period, and that the new right is available to women who have been continuously employed for a year (reg.5) rather than for two years. The provision made for compulsory maternity leave (in new section 72 of the 1996 Act and reg.8) implements article 8.2 of the Pregnant Workers Directive ([92/85/EEC](#); OJ No. L348,28.11.92, p.1), replacing the Maternity (Compulsory Leave) Regulations 1994 (S.I.1994/2479) which originally implemented that provision.

The right to parental leave is available to employees who have been continuously employed for a year and have, or expect to have, parental responsibility (in Scotland, parental responsibilities) for a child (reg.13). The period of leave is 13 weeks (reg.14), and leave must generally be taken before the child’s fifth birthday (reg.15, which sets out exceptions including provision for leave to be taken before the eighteenth birthday of a child entitled to a disability living allowance). Schedule 2 to the Regulations sets out provisions requiring that the employer must be notified of any proposal to take parental leave and may postpone it for up to six months; it also provides that (except in the case of a child entitled to a disability living allowance) parental leave may not be taken in periods other than a week or a multiple of a week. These provisions apply only to employees who are not subject to a collective or workforce agreement relating to parental leave.

In relation to both additional maternity leave and parental leave, provision is made for certain contractual rights and obligations to continue during the period of absence (reg.17), and for the employee to return to the same or an appropriate alternative job after that period (reg.18). The Regulations also make provision under sections 47C and 99 of the 1996 Act (both inserted by the Employment Relations Act 1999), identifying the cases where the protection against detriment or dismissal for which those sections provide is applicable (regs.19 and 20). The cases are not only cases connected with maternity or parental leave but also cases connected with the right to time off for dependants under new section 57A of the 1996 Act.

A Regulatory Impact Assessment of the costs and benefits that these Regulations would have is available to the public from Employment Relations 5A, Department of Trade and Industry, 1 Victoria Street, London SW1H 0ET.