

This draft Statutory Instrument supersedes the draft of the same title which was laid before Parliament on 19 January 2010 and published on 22 January 2010. It is being issued free of charge to all known recipients of that draft Statutory Instrument.

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

2010 No. 0000

TERMS AND CONDITIONS OF EMPLOYMENT

The Additional Paternity Leave Regulations 2010

Made - - - -

Coming into force - -

6th April 2010

CONTENTS

PART 1

GENERAL

1.	Citation, commencement and extent	3
2.	Interpretation	3
3.	Application	4

PART 2

ADDITIONAL PATERNITY LEAVE (BIRTH)

4.	Entitlement to additional paternity leave (birth)	5
5.	Options in respect of leave under regulation 4	5
6.	Notice and evidential requirements for leave under regulation 4	6
7.	Variation or cancellation of leave under regulation 4 before leave period has begun	7
8.	Employer's confirmation of period of leave under regulation 4	7
9.	Commencement of leave under regulation 4	8
10.	Entitlement to additional paternity leave (birth) in the event of the mother's death	8
11.	Options in respect of leave under regulation 4 in the event of the mother's death	8
12.	Notice and evidential requirements for leave under regulation 4 in the event of the mother's death	9
13.	Variation or cancellation of leave under regulation 4 in the event of the mother's death	10

PART 3

ADDITIONAL PATERNITY LEAVE (ADOPTION)

14.	Entitlement to additional paternity leave (adoption)	11
15.	Options in respect of leave under regulation 14	11
16.	Notice and evidential requirements for leave under regulation 14	12
17.	Variation or cancellation of leave under regulation 14 before leave period has begun	13
18.	Employer's confirmation of period of leave under regulation 14	13
19.	Commencement of leave under regulation 14	14
20.	Entitlement to additional paternity leave (adoption) in the event of the death of the adopter	14
21.	Options in respect of leave under regulation 14 where the adopter has died	14
22.	Notice and evidential requirements for leave under regulation 14 in the event of the death of the adopter	15
23.	Variation or cancellation of leave under regulation 14 in the event of the death of the adopter	16

PART 4

PROVISIONS APPLICABLE TO BOTH TYPES OF ADDITIONAL PATERNITY LEAVE

24.	Disrupted placement or death of a child in the course of additional paternity leave	17
25.	Return to work	18
26.	Work during an additional paternity leave period	18
27.	Application of terms and conditions during additional paternity leave	18
28.	Redundancy during additional paternity leave	19
29.	Dismissal during additional paternity leave	19
30.	Early return from additional paternity leave period	19
31.	Right to return after additional paternity leave	20
32.	Incidents of the right to return after additional paternity leave	20
33.	Protection from detriment	21
34.	Unfair dismissal	21
35.	Contractual rights to additional paternity leave	22
36.	Calculation of a week's pay	22

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 47C(2), 80AA, 80BB, 80C, 80D, 80E and 99 of the Employment Rights Act 1996(a).

In accordance with section 236(3)(b) of the Employment Rights Act 1996, a draft of these Regulations was laid before Parliament and approved by a resolution of each House of Parliament.

(a) 1996 c.18. Section 47C was inserted by the Employment Relations Act 1999 (c. 26), Schedule 4, Part 3, paragraphs 5 and 8. Further relevant amendments were made by the Employment Act 2002 (c. 22), Schedule 7, paragraphs 24 and 26 and by the Work and Families Act 2006 (c.18), Schedule 1, paragraph 30. Section 80AA was inserted by the Work and Families Act 2006, section 3 and section 80BB was inserted by section 4 of that Act. Sections 80C, 80D and 80E were inserted by section 1 of the Employment Act 2002 and subsequently amended by the Work and Families Act 2006, section 5. Section 99 was substituted by the Employment Relations Act 1999, Schedule 4, Part 3, paragraphs 5 and 16, and amended by the Employment Act 2002, Schedule 7, paragraphs 24 and 33 and by the Work and Families Act 2006, Schedule 1, paragraph 41.

(b) Section 236(3) of the Employment Rights Act 1996 was amended by the Employment Relations Act 1999, Schedule 4, Part 3, paragraphs 5 and 42 and the Employment Act 2002, Schedule 7, paragraphs 24 and 49. A further relevant amendment was made by paragraph 44 of Schedule 1 to the Work and Families Act 2006.

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^(a), and in relation to Scotland, by section 119(1) of the Adoption and Children (Scotland) Act 2007^(b);

“adoption leave” means ordinary adoption leave under section 75A of the 1996 Act or additional adoption leave under section 75B of that Act^(c);

“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^(d);

“maternity leave” means ordinary maternity leave under section 71 of the 1996 Act or additional maternity leave under section 73 of that Act^(e);

“parental leave” means leave under regulation 13(1) of the Maternity and Parental Leave etc Regulations 1999^(f);

“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^(g);

“statutory adoption pay” has the meaning given in section 171ZL of the Social Security Contributions and Benefits Act 1992^(h);

(a) 2002 c.38.

(b) 2007 asp. 4.

(c) 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.

(d) 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.

(e) 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.

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

(g) 1998 c.29.

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

“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(a), regulation 28(3) of the Adoption Agencies (Wales) Regulations 2005(b) or regulation 8(5) of the Adoption Agencies (Scotland) Regulations 2009(c).

(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)—

- (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(d)) falls on or after 6th April 2010.

(a) S.I. 2005/389, to which there are amendments not relevant to these Regulations.

(b) S.I. 2005/1313.

(c) S.S.I. 2009/154.

(d) 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.

PART 2

ADDITIONAL PATERNITY LEAVE (BIRTH)

Entitlement to additional paternity leave (birth)

4.—(1) An employee (“P”) is entitled to be absent from work for the purpose of caring for a child (“C”) if—

- (a) P satisfies the conditions specified in paragraph (2);
- (b) P has complied with the requirements in regulation 6 and, where applicable, regulation 7; and
- (c) C’s mother (“M”) satisfies the conditions specified in paragraph (5) and has signed the mother declaration referred to in regulation 6.

(2) The conditions referred to in paragraph (1)(a) are that P—

- (a) has been continuously employed with an employer for a period of not less than 26 weeks ending with the relevant week;
- (b) remains in continuous employment with that employer until the week before the first week of P’s additional paternity leave;
- (c) is either—
 - (i) C’s father, or
 - (ii) married to or the partner or civil partner of M, but not C’s father; and
- (d) has, or expects to have, the main responsibility (apart from any responsibility of M) for the upbringing of C.

(3) The references in this regulation to the relevant week are to the week immediately preceding the 14th week before C’s expected week of birth.

(4) P shall be treated as having satisfied the condition in paragraph (2)(a) on the date of C’s birth, notwithstanding the fact that P has not then been continuously employed for the period referred to in that paragraph, where—

- (a) the date on which C is born is earlier than the relevant week; and
- (b) P would have been continuously employed for such a period if P’s employment had continued until the relevant week.

(5) The conditions referred to in paragraph (1)(c) are that M—

- (a) is entitled by reference to becoming pregnant with C to one or more of the following—
 - (i) maternity leave;
 - (ii) statutory maternity pay; or
 - (iii) maternity allowance; and
- (b) has, or is treated as having, returned to work under regulation 25.

(6) P’s entitlement to leave under this regulation shall not be affected by the birth, or expected birth, of more than one child as the result of the same pregnancy.

Options in respect of leave under regulation 4

5.—(1) P may take leave under regulation 4 at any time within the period which begins 20 weeks after the date on which C is born and ends 12 months after that date.

(2) The minimum period of leave which may be taken is two weeks and the maximum period is 26 weeks.

(3) The leave must be taken in multiples of complete weeks and must be taken as one continuous period.

(4) The leave may not be taken until eight weeks after the date P gave leave notice under regulation 6(1).

(5) This regulation is subject to regulation 24 (disrupted placement or death of a child).

Notice and evidential requirements for leave under regulation 4

6.—(1) P must, not less than eight weeks before the start date chosen by P for the period of leave, give P’s employer (“E”)—

- (a) a leave notice;
- (b) an employee declaration; and
- (c) a mother declaration.

(2) In this regulation—

- (a) “a leave notice” means a written notice specifying—
 - (i) the week which was C’s expected week of birth;
 - (ii) C’s date of birth;
 - (iii) the dates P has chosen in accordance with regulation 5 as the start date and end date for the period of leave.
- (b) “an employee declaration” means a written declaration signed by P, stating—
 - (i) that the purpose of the period of leave will be to care for C, and
 - (ii) that P satisfies the conditions in regulation 4(2)(c) and (d).
- (c) “mother declaration” means a written declaration by M stating—
 - (i) M’s name and address;
 - (ii) the date M intends to return to work (within the meaning of regulation 25);
 - (iii) M’s National Insurance number;
 - (iv) that P satisfies the conditions in regulation 4(2)(c) and (d);
 - (v) that P is to M’s knowledge the only person exercising the entitlement to additional paternity leave in respect of C; and
 - (vi) that M consents to E processing such of M’s information as is contained in the declaration.

(3) Where E makes a request within 28 days of receiving P’s leave notice, P must, within 28 days of E’s request, give E such of the following as E may request—

- (a) a copy of C’s birth certificate; and
- (b) the name and address of M’s employer (or, if M is self-employed, M’s business address).

(4) After giving leave notice, P must give E written notice (“withdrawal notice”) as soon as reasonably practicable if—

- (a) P no longer satisfies the conditions in regulation 4(2)(c) or (d); or
- (b) M no longer satisfies the conditions in regulation 4(5).

(5) E may require P to take a period of leave where—

- (a) P has given E withdrawal notice less than six weeks before the start date specified in P’s leave notice or, where applicable, last varied in accordance with regulation 7, and
- (b) it is not reasonably practicable for E to accommodate the change in P’s arrangements.

(6) Leave that E may require P to take under paragraph (5)—

- (a) shall be treated as additional paternity leave for the purpose of these Regulations;
- (b) shall start on the start date specified in P’s leave notice, or, where applicable, last varied in accordance with regulation 7; and
- (c) shall end no later than—

- (i) six weeks after the date on which withdrawal notice was given to E, or
 - (ii) the end date specified in P's leave notice or, where applicable, last varied in accordance with regulation 7,

whichever is the earlier.
- (7) E may require P to remain on leave where—
 - (a) P has given E withdrawal notice after P's period of additional paternity leave has begun, and
 - (b) it is not reasonably practicable for E to accommodate the change in P's arrangements.
- (8) The period for which E may require P to remain on leave under paragraph (7)—
 - (a) shall end no later than the earlier of—
 - (i) six weeks after the date on which P gave E withdrawal notice, or
 - (ii) the end date specified in P's leave notice or, where applicable, last varied in accordance with regulation 7; and
 - (b) shall be treated as additional paternity leave for the purpose of these Regulations.

Variation or cancellation of leave under regulation 4 before leave period has begun

7.—(1) Before P's leave period has begun, P may cancel P's leave notice, or vary the dates notified as the start and end date for the period of leave, provided that P gives E written notice ("subsequent notice")—

- (a) before the earlier of—
 - (i) six weeks before the date cancelled or varied, or
 - (ii) six weeks before the new date, or,
 - (b) if it is not reasonably practicable for P to give notice in accordance with sub-paragraph (a), as soon as is reasonably practicable.
- (2) Where P has given subsequent notice, but—
 - (a) the notice does not comply with paragraph (1)(a), and
 - (b) it is not reasonably practicable for E to accommodate the change in P's arrangements,

E may require that P take a period of additional paternity leave.
- (3) Additional paternity leave which P is required to take under paragraph (2)—
 - (a) shall start—
 - (i) on the start date specified by P in the leave notice, or
 - (ii) where applicable, the start date specified in the most recent subsequent notice given by P in compliance with the requirements of paragraph (1)(a); and
 - (b) shall end no later than—
 - (i) six weeks after P gave notice under paragraph (1), or
 - (ii) the end date specified in the leave notice or, where applicable, the most recent subsequent notice given by P in compliance with the requirements of paragraph (1)(a),

whichever is the earlier.
- (4) In this regulation, "leave notice" has the meaning given by regulation 6(2).

Employer's confirmation of period of leave under regulation 4

8.—(1) Subject to paragraph (2), where P gives leave notice under regulation 6(1) or subsequent notice under regulation 7(1) to E, E shall, within 28 days of receipt of the notice, confirm the relevant dates to P in writing.

(2) Where E requires P to take leave under regulations 6(5) or 7(2), E shall notify P of the dates of that leave as soon as reasonably practicable, and at any event before the start of the leave that P is required to take under regulations 6(5) or 7(2).

Commencement of leave under regulation 4

9. Save where regulations 6(5) or 7(2) apply, P's period of additional paternity leave under regulation 4 begins—

- (a) on the start date specified in P's leave notice under regulation 6(1), or,
- (b) where applicable, the date specified in P's most recent subsequent notice under regulation 7(1).

Entitlement to additional paternity leave (birth) in the event of the mother's death

10.—(1) In a case where M has died before the end of the period of twelve months beginning with C's birth, the provisions in regulations 4 to 9 shall apply with the following modifications.

(2) In regulation 4 (entitlement to additional paternity leave (birth))—

- (a) paragraph (1)(b) shall apply as if the references in that paragraph—
 - (i) to regulation 6 were references to regulation 12;
 - (ii) to regulation 7 were references to regulation 13;
- (b) paragraph (1)(c) shall be replaced by—

“(c) C's mother (“M”) satisfied, before her death, one or more of the conditions specified in paragraph (5)(a) (or would have satisfied such conditions but for the fact that M has died).”;
- (c) the condition in paragraph (2)(c)(ii) shall be taken to be satisfied if it would have been satisfied but for the fact that M has died; and
- (d) paragraph (5)(b) shall be omitted.

(3) Regulation 5 (options in respect of leave) shall be replaced by regulation 11.

(4) Regulation 6 (notice and evidential requirements for leave) shall be replaced by regulation 12.

(5) Regulation 7 (variation or cancellation of leave) shall be replaced by regulation 13.

(6) Regulations 8 (confirmation of leave) and 9 (commencement of leave) apply as if the references in those regulations—

- (a) to regulation 6(1) were references to regulation 12(1);
- (b) to regulation 6(5) were references to regulation 12(7);
- (c) to regulation 7(1) were references to regulation 13(2); and
- (d) to regulation 7(2) were references to regulation 13(3).

Options in respect of leave under regulation 4 in the event of the mother's death

11.—(1) P may take leave under regulation 4, as modified by regulation 10, at any time within the period beginning with the date of M's death and ending 12 months after the date of C's birth.

(2) The minimum period of leave which may be taken is two weeks and the maximum period is 52 weeks.

(3) The leave must be taken as one continuous period and must be taken in multiples of complete weeks.

(4) P shall not be entitled to leave in accordance with regulation 4, as modified by regulation 10, if P has already taken a period of additional paternity leave in respect of C which has ended before the date of M's death.

(5) If P is on leave under regulation 4 on the date of M's death, P shall be entitled to extend the leave to include a further period of leave in accordance with regulation 4, as modified by regulation 10, provided—

- (a) P satisfies the conditions for eligibility set out in regulation 4 as so modified;
- (b) that further period of leave immediately follows the first, together with which it forms one continuous period of additional paternity leave;
- (c) the total period of additional paternity leave taken does not exceed 52 weeks; and
- (d) the entire period of additional paternity leave is taken within the period of 12 months after the date of C's birth.

(6) This regulation is subject to regulation 24 (disrupted placement or death of a child).

Notice and evidential requirements for leave under regulation 4 in the event of the mother's death

12.—(1) As soon as reasonably practicable after the date of M's death, and in any event, on or before the relevant date, P must give P's employer ("E"), in writing—

- (a) a leave notice; and
- (b) an employee declaration.

(2) In this regulation—

- (a) "a leave notice" means a written notice specifying—
 - (i) the week which was C's expected week of birth;
 - (ii) C's date of birth;
 - (iii) the dates P has chosen in accordance with regulation 11 as the start date and end date for the period of leave.
- (b) "an employee declaration" means a written declaration signed by P, stating—
 - (i) that the purpose of the period of leave will be to care for C;
 - (ii) that P satisfies the conditions in regulation 4(2)(c) and (d), as modified by regulation 10;
 - (iii) M's name and last address;
 - (iv) the date of M's death; and
 - (v) M's National Insurance number.

(c) "the relevant date" is eight weeks after the date of M's death.

(3) Where E makes a request within 28 days of receiving P's leave notice, P must, within 28 days of E's request, give E such of the following as E may request—

- (a) a copy of C's birth certificate; and
- (b) the name and address of M's employer (or, if M was self-employed, M's business address).

(4) If P takes leave before the relevant date, P shall be taken to have complied with the requirements of paragraph (1), if P, as soon as reasonably practicable, informs E that M has died and, before the relevant date, gives leave notice and the employee declaration.

(5) Notwithstanding paragraph (1), P may give E leave notice and the employee declaration after the relevant date, provided that P gives E written notice at least six weeks before the start date chosen by P for the period of leave.

(6) If P, after giving leave notice, no longer satisfies the conditions in regulation 4(2)(c) or (d) as modified by regulation 10, P must give E written notice (withdrawal notice) as soon as reasonably practicable.

(7) E may require that P take a period of leave where—

- (a) P has given E withdrawal notice—

- (i) less than six weeks before the start date specified in P's leave notice, or, where applicable, last varied in accordance with regulation 13, and
 - (ii) after the relevant date, and
 - (b) it is not reasonably practicable for E to accommodate the change in P's arrangements.
- (8) Leave that E may require P to take under paragraph (7)—
- (a) shall be treated as additional paternity leave for the purpose of these Regulations;
 - (b) shall start on the start date specified in P's leave notice, or, where applicable, last varied in accordance with regulation 13; and
 - (c) shall end no later than—
 - (i) six weeks after the date on which withdrawal notice was given to E, or
 - (ii) the end date specified in P's leave notice, or, where applicable, last varied in accordance with regulation 13,
 whichever is the earlier.
- (9) E may require P to remain on leave where—
- (a) P has given E withdrawal notice—
 - (i) after P's period of additional paternity leave has begun, and
 - (ii) after the relevant date, and
 - (b) it is not reasonably practicable for E to accommodate the change in P's arrangements.
- (10) The period for which E may require P to remain on leave under regulation (9)—
- (a) shall end no later than the earlier of—
 - (i) six weeks after the date on which P gave E withdrawal notice, or
 - (ii) the end date specified in P's leave notice, or, where applicable, last varied in accordance with regulation 13; and
 - (b) shall be treated as additional paternity leave for the purpose of these Regulations.

Variation or cancellation of leave under regulation 4 in the event of the mother's death

13.—(1) Notwithstanding regulation 9 as modified by regulation 10, P may, on or before the relevant date, cancel P's leave notice, or vary the dates notified as the start and end dates for the period of leave, by notifying E in writing on or before any date that is varied or cancelled.

(2) After the relevant date, but before P's leave period has begun, P may cancel P's leave notice, or vary the dates notified as the start and end date for the period of leave, provided that P gives E written notice ("subsequent notice")—

- (a) before the earlier of—
 - (i) six weeks before the date cancelled or varied, or
 - (ii) six weeks before the new date, or,
 - (b) if it is not reasonably practicable for P to give notice in accordance with sub-paragraph (a), as soon as is reasonably practicable.
- (3) Where P has given subsequent notice, but—
- (a) the notice does not comply with paragraph (2)(a), and
 - (b) it is not reasonably practicable for E to accommodate the change in P's arrangements,

E may require that P take a period of additional paternity leave.

- (4) Additional paternity leave which P is required to take under paragraph (3)—
- (a) shall start—
 - (i) on the start date specified by P in the leave notice, or
 - (ii) where applicable, the start date specified in the most recent subsequent notice given by P in compliance with the requirements of paragraphs (1) or (2)(a); and

(b) shall end no later than—

- (i) six weeks after P gave notice under paragraph (2), or
- (ii) the end date specified in the leave notice or, where applicable, the most recent subsequent notice given by P in compliance with the requirements of paragraphs (1) or (2)(a),

whichever is the earlier.

(5) In this regulation, the terms “relevant date” and “leave notice” have the meanings given by regulation 12(2).

PART 3

ADDITIONAL PATERNITY LEAVE (ADOPTION)

Entitlement to additional paternity leave (adoption)

14.—(1) An employee (“P”) is entitled to be absent from work for the purpose of caring for a child placed for adoption (“C”) if—

- (a) P satisfies the conditions specified in paragraph (2);
- (b) P has complied with the requirements in regulation 16 and, where applicable, regulation 17; and
- (c) C’s adopter (“A”) satisfies the conditions specified in paragraph (4) and has signed the adopter declaration referred to in regulation 16.

(2) The conditions referred to in paragraph (1)(a) are that P—

- (a) has been continuously employed with an employer for a period of not less than 26 weeks ending with the relevant week;
- (b) remains in continuous employment with that employer from the relevant week until the week before the first week of P’s additional paternity leave;
- (c) is married to, or is the partner or civil partner of, A; and
- (d) has been matched with C for adoption.

(3) The references in paragraph (2) above to the relevant week are to the week, beginning with Sunday, in which P is notified of having been matched with C.

(4) The conditions referred to in paragraph (1)(c) are that A—

- (a) is entitled by reference to the adoption of C to one or both of—
 - (i) adoption leave; or
 - (ii) statutory adoption pay; and

(b) has, or is treated as having, returned to work under regulation 25.

(5) P’s entitlement to leave under this regulation shall not be affected by the placement for adoption of more than one child as part of the same arrangement.

Options in respect of leave under regulation 14

15.—(1) P may choose to take leave under regulation 14 at any time within the period which begins 20 weeks after the date of C’s placement for adoption and ends 12 months after that date.

(2) The minimum period of leave which may be taken is two weeks and the maximum period is 26 weeks.

(3) The leave must be taken in multiples of complete weeks and must be taken as one continuous period.

(4) The leave may not be taken until eight weeks after the date of P’s leave notice under regulation 16(1).

- (5) This regulation is subject to regulation 24 (disrupted placement or death of a child).

Notice and evidential requirements for leave under regulation 14

16.—(1) P must, not less than eight weeks before the start date chosen by P for the period of leave, give P's employer ("E")—

- (a) a leave notice;
- (b) an employee declaration; and
- (c) an adopter declaration.

(2) In this regulation—

- (a) "a leave notice" means a written notice specifying—
 - (i) the date on which P was notified of having been matched with C;
 - (ii) the date on which C was placed with P;
 - (iii) the dates which P has chosen in accordance with regulation 15 as the start date and end date for the period of leave.
- (b) "an employee declaration" means a written declaration signed by P, stating—
 - (i) that the purpose of the period of leave will be to care for C; and
 - (ii) that P satisfies the conditions in regulation 14(2)(c) and (d).
- (c) "an adopter declaration" means a written declaration by A stating—
 - (i) A's name and address;
 - (ii) the date A intends to return to work (within the meaning of regulation 25);
 - (iii) A's National Insurance number;
 - (iv) that P satisfies the conditions in regulation 14(2)(c); and
 - (v) that A consents to E processing such of A's information as is contained in the declaration.

(3) Where E makes a request within 28 days of receiving P's leave notice, P must, within 28 days of E's request, give E such of the following as E may request—

- (a) evidence, in the form of one or more documents issued by the adoption agency that matched P with C, of—
 - (i) the name and address of the agency;
 - (ii) the date on which P was notified that P had been matched with C;
 - (iii) the date given by the agency as that on which it expected to place C for adoption with A and P; and
- (b) the name and address of A's employer (or, if A is self-employed, A's business address).

(4) After giving leave notice, P must give E written notice ("withdrawal notice") as soon as reasonably practicable if—

- (a) P no longer satisfies the conditions in regulation 14(2)(c) or (d);
- (b) A no longer satisfies the conditions in regulation 14(4).

(5) E may require P to take a period of leave where—

- (a) P has given E withdrawal notice less than six weeks before the start date specified in P's leave notice, or, where applicable, last varied in accordance with regulation 17, and
- (b) it is not reasonably practicable for E to accommodate the change in P's arrangements.

(6) Leave that E may require P to take under paragraph (5)—

- (a) shall be treated as additional paternity leave for the purpose of these Regulations;
- (b) shall start on the start date specified in P's leave notice, or last varied in accordance with regulation 17; and

- (c) shall end no later than—
 - (i) six weeks after the date on which withdrawal notice was given to E, or
 - (ii) the end date specified in P’s leave notice, or, where applicable, last varied in accordance with regulation 17,
 whichever is the earlier.
- (7) E may require P to remain on leave where—
 - (a) P has given E withdrawal notice after P’s period of additional paternity leave has begun, and
 - (b) it is not reasonably practicable for E to accommodate the change in P’s arrangements.
- (8) The period for which E may require P to remain on leave under paragraph (7)—
 - (a) shall end no later than the earlier of—
 - (i) six weeks after the date on which P gave E withdrawal notice, or
 - (ii) the end date specified in P’s leave notice or, where applicable, last varied in accordance with regulation 17, and
 - (b) shall be treated as additional paternity leave for the purpose of these Regulations.

Variation or cancellation of leave under regulation 14 before leave period has begun

17.—(1) Before P’s leave period has begun, P may cancel P’s leave notice, or vary the dates notified as the start and end date for the period of leave, provided that P gives E written notice (“subsequent notice”)—

- (a) before the earlier of—
 - (i) six weeks before the date cancelled or varied, or
 - (ii) six weeks before the new date, or,
 - (b) if it is not reasonably practicable for P to give notice in accordance with sub-paragraph (a), as soon as is reasonably practicable.
- (2) Where P has given subsequent notice, but—
- (a) the notice does not comply with paragraph (1)(a), and
 - (b) it is not reasonably practicable for E to accommodate the change in P’s arrangements,
- E may require that P take a period of additional paternity leave.
- (3) Additional paternity leave which P is required to take under paragraph (2)—
- (a) shall start—
 - (i) on the start date specified by P in the leave notice, or
 - (ii) where applicable, the start date specified in the most recent subsequent notice given by P in compliance with the requirements of paragraph (1)(a); and
 - (b) shall end no later than —
 - (i) six weeks after P gave notice under paragraph (1), or
 - (ii) the end date specified in the leave notice or, where applicable, the most recent subsequent notice given by P in compliance with the requirements of paragraph (1)(a),
 whichever is the earlier.
- (4) In this regulation, “leave notice” has the meaning given by regulation 16(2).

Employer’s confirmation of period of leave under regulation 14

18.—(1) Subject to paragraph (2), where P gives leave notice under regulation 16(1) or subsequent notice under regulation 17(1) to E, E shall, within 28 days of receipt of the notice, confirm the relevant dates to P in writing.

(2) Where E requires P to take leave under regulations 16(5) or 17(2), E shall notify P of the dates of that leave as soon as reasonably practicable, and at any event before the start of the leave that P is required to take under regulations 16(5) or 17(2).

Commencement of leave under regulation 14

19. Save where regulations 16(5) and 17(2) apply, P's period of additional paternity leave under regulation 14 begins—

- (a) on the start date notified in P's leave notice under regulation 16(1), or,
- (b) where applicable, the date specified in P's most recent subsequent notice under regulation 17(1).

Entitlement to additional paternity leave (adoption) in the event of the death of the adopter

20.—(1) In a case where A has died before the end of the period of 12 months beginning with C's placement for adoption, the provisions in regulations 14 to 19 shall apply with the following modifications.

(2) In regulation 14 (entitlement to additional paternity leave (adoption))—

(a) paragraph (1)(b) shall apply as if the references in that paragraph—

- (i) to regulation 16 were references to regulation 22;
- (ii) to regulation 17 were references to regulation 23;

(b) paragraph (1)(c) shall read—

“(c) C's adopter (“A”) satisfied, before A's death, one or more of the conditions specified in paragraph (4)(a) (or would have satisfied such conditions but for the fact that A has died).”;

(c) the condition in paragraph (2)(c) shall be taken to be satisfied if it would have been satisfied but for the fact that A has died; and

(d) the requirement in paragraph (4)(b) shall be omitted.

(3) Regulation 15 (options in respect of leave) shall be replaced by regulation 21.

(4) Regulation 16 (notice and evidential requirements for leave) shall be replaced by regulation 22.

(5) Regulation 17 (variation or cancellation of leave) shall be replaced by regulation 23.

(6) Regulations 18 (employer's confirmation) and 19 (commencement of leave) apply as if the references in those regulations—

- (a) to regulation 16(1) were references to regulation 22(1);
- (b) to regulation 16(5) were references to regulation 22(7);
- (c) to regulation 17(1) were references to regulation 23(2); and
- (d) to regulation 17(2) were references to regulation 23(3).

Options in respect of leave under regulation 14 where the adopter has died

21.—(1) P may take leave under regulation 14, as modified by regulation 20, at any time within the period beginning with the date of A's death and ending 12 months after the date of C's placement for adoption.

(2) The minimum period of leave which may be taken is two weeks and the maximum period is 52 weeks.

(3) The leave must be taken as one continuous period and must be taken in multiples of complete weeks.

(4) P shall not be entitled to leave in accordance with regulation 14, as modified by regulation 20, if P has already taken a period of additional paternity leave in respect of C which has ended before the date of A's death.

(5) If P is on leave under regulation 14 on the date of A's death, P shall be entitled to extend the leave to include a further period of leave in accordance with regulation 14, as modified by regulation 20, provided—

- (a) P satisfies the conditions for eligibility set out in regulation 14 as so modified;
- (b) that further period of leave immediately follows the first, together with which it forms one continuous period of additional paternity leave;
- (c) the total period of additional paternity leave taken does not exceed 52 weeks; and
- (d) the entire period of additional paternity leave is taken within the period of 12 months after the date of C's placement for adoption.

(6) This regulation is subject to regulation 24 (disrupted placement or death of a child).

Notice and evidential requirements for leave under regulation 14 in the event of the death of the adopter

22.—(1) As soon as reasonably practicable after the date of A's death, and in any event, on or before the relevant date, P must give P's employer ("E"), in writing—

- (a) a leave notice; and
- (b) an employee declaration.

(2) In this regulation—

- (a) "a leave notice" means a written notice specifying—
 - (i) the date on which P was notified of having been matched with C;
 - (ii) the date on which C was placed with P;
 - (iii) the dates P has chosen in accordance with regulation 21 as the start date and end date for the period of leave.
- (b) "an employee declaration" means a written declaration signed by P, stating—
 - (i) that the purpose of the period of leave will be to care for C;
 - (ii) that P satisfies the conditions in regulation 14(2)(c) and (d), as modified by regulation 20;
 - (iii) A's name and last address;
 - (iv) the date of A's death; and
 - (v) A's National Insurance number.
- (c) "the relevant date" is eight weeks after the date of A's death.

(3) Where E makes a request within 28 days of receiving P's leave notice, P must, within 28 days of E's request, give E such of the following as E may request—

- (a) evidence, in the form of one or more documents issued by the adoption agency that matched P with C, of—
 - (i) the name and address of the agency;
 - (ii) the date on which P was notified of having been matched with C;
 - (iii) the date given by the agency as that on which it expected to place C for adoption with A and P; and
- (b) the name and address of A's last employer (or, if A was self-employed, A's business address).

(4) If P takes leave before the relevant date, P shall be taken to have complied with the requirements of paragraph (1), if P, as soon as reasonably practicable, informs E of A's death and, before the relevant date, gives leave notice and the employee declaration.

(5) Notwithstanding paragraph (1), P may give E leave notice and the employee declaration after the relevant date, provided that P gives E written notice at least six weeks before the start date chosen by P for the period of leave.

(6) If P, after giving leave notice, no longer satisfies the conditions in regulation 14(2)(c) or (d) as modified by regulation 20, P must give E written notice (“withdrawal notice”) as soon as reasonably practicable.

(7) E may require that P take a period of leave where—

(a) P has given E withdrawal notice—

(i) less than six weeks before the start date specified in P’s leave notice, or, where applicable, last varied in accordance with regulation 23, and

(ii) after the relevant date, and

(b) it is not reasonably practicable for E to accommodate the change in P’s arrangements.

(8) Leave that E may require P to take under paragraph (7)—

(a) shall be treated as additional paternity leave for the purpose of these Regulations;

(b) shall start on the start date specified in P’s leave notice, or, where applicable, last varied in accordance with regulation 23; and

(c) shall end no later than—

(i) six weeks after the date on which withdrawal notice was given to E, or

(ii) the end date specified in P’s leave notice, or, where applicable, last varied in accordance with regulation 23,

whichever is the earlier.

(9) E may require P to remain on leave where—

(a) P has given E withdrawal notice—

(i) after P’s period of additional paternity leave has begun, and

(ii) after the relevant date, and

(b) it is not reasonably practicable for E to accommodate the change in P’s arrangements.

(10) The period for which E may require P to remain on leave under regulation (9)—

(a) shall end no later than the earlier of—

(i) six weeks after the date on which P gave E withdrawal notice, or

(ii) the end date specified in P’s leave notice, or, where applicable, last varied in accordance with regulation 23; and

(b) shall be treated as additional paternity leave for the purpose of these Regulations.

Variation or cancellation of leave under regulation 14 in the event of the death of the adopter

23.—(1) Notwithstanding regulation 19 as modified by regulation 20, P may, on or before the relevant date, cancel P’s leave notice, or vary the dates notified as the start and end dates for the period of leave, by notifying E in writing on or before any date that is varied or cancelled.

(2) After the relevant date, but before P’s leave period has begun, P may cancel P’s leave notice, or vary the dates notified as the start and end date for the period of leave, provided that P gives E written notice (“subsequent notice”)—

(a) before the earlier of—

(i) six weeks before the date cancelled or varied, or

(ii) six weeks before the new date, or,

(b) if it is not reasonably practicable for P to give notice in accordance with sub-paragraph (a), as soon as is reasonably practicable.

(3) Where P has given subsequent notice, but—

- (a) the notice does not comply with paragraph (2)(a), and
 - (b) it is not reasonably practicable for E to accommodate the change in P's arrangements,
- E may require that P take a period of additional paternity leave.
- (4) Additional paternity leave which P is required to take under paragraph (3)—
- (a) shall start—
 - (i) on the start date specified by P in the leave notice, or
 - (ii) where applicable, the start date specified in the most recent subsequent notice given by P in compliance with the requirements of paragraphs (1) or (2)(a); and
 - (b) shall end no later than—
 - (i) six weeks after P gave notice under paragraph (2), or
 - (ii) the end date specified in the leave notice or, where applicable, the most recent subsequent notice given by P in compliance with the requirements of paragraphs (1) or (2)(a),
 whichever is the earlier.
- (5) In this regulation, the terms “relevant date” and “leave notice” have the meanings given by regulation 22(2).

PART 4

PROVISIONS APPLICABLE TO BOTH TYPES OF ADDITIONAL PATERNITY LEAVE

Disrupted placement or death of a child in the course of additional paternity leave

24.—(1) This regulation applies where, during an employee (“P’s”) leave notice period or additional paternity leave period in respect of a child (“C”)—

- (a) C dies, or
- (b) where C has been placed for adoption, C is returned to the adoption agency under sections 32, 33 or 34(3) of the Adoption and Children Act 2002^(a) or section 25(6) of the Adoption and Children (Scotland) Act 2007^(b).

(2) Subject to regulation 29 (dismissal during additional leave period), in a case where this regulation applies—

- (a) where the end date of P’s leave occurs less than eight weeks after the relevant week, P’s additional paternity leave period ends on the end date,
- (b) where the end date of P’s leave occurs eight or more weeks after the relevant week, P’s additional paternity leave period ends eight weeks after the end of the relevant week.

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

- (a) the relevant week means the period of seven days beginning with Sunday, during which—
 - (i) in a case falling within paragraph (1)(a), C dies,
 - (ii) in a case falling within paragraph (1)(b), C is returned to the adoption agency.
- (b) the end date of P’s leave is—
 - (i) the end date notified by P in accordance with regulation 6(1), 12(1), 16(1) or 22(1),
 - (ii) where P has varied the end date, that most recently varied in accordance with regulation 7(1), 13(1), 13(2), 17(1), 23(1), or 23(2),

^(a) 2002 c.38.
^(b) 2007 asp.4.

- (iii) where E required P to take leave, or remain on leave, the end date determined by E in accordance with regulation 6(5), 6(7), 7(2), 12(7), 12(9), 13(3), 16(5), 16(7), 17(2), 22(7), 22(9) and 23(3) and notified to P in accordance with regulation 8(2), 8(2) as modified by regulation 10, 18(2) or 18(2) as modified by regulation 20 as applicable, or

- (iv) where applicable, the end date determined under regulation 30.

(4) In paragraph (1), P's leave notice period is the period starting on the day P notifies E in accordance with regulation 6(1), 12(1), 16(1) or 22(1) of P's intention to take additional paternity leave and ending on the day before the day that leave begins.

Return to work

25. For the purposes of these Regulations, a mother ("M") or adopter ("A") is treated as returning to work if one of the following situations applies—

- (a) in a case where M or A is entitled to maternity leave or to adoption leave in respect of a child ("C"), the leave period has ended;
- (b) in a case where M or A is entitled, in respect of C, to payment of:
 - (i) maternity allowance, that payment is not payable by virtue of regulations made under section 35(3)(a)(i) of the Social Security Contributions and Benefits Act 1992(a);
 - (ii) statutory maternity pay, that payment is not payable in accordance with section 165(4) or (6) of the Social Security Contributions and Benefits Act 1992(b); or
 - (iii) statutory adoption pay, that payment is not payable in accordance with section 171ZN(3) or (5) of the Social Security Contributions and Benefits Act 1992 Act(c);
- (c) in a case where both (a) and (b) apply, the conditions in both (a) and (b) are satisfied.

Work during an additional paternity leave period

26.—(1) P may carry out up to ten days' work for P's employer ("E") during P's additional paternity leave period without bringing the additional paternity leave period 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 P and E which either party is entitled to make during an additional paternity leave period (for example to discuss P's return to work) shall not bring that period to an end.

(5) This regulation does not confer any right on E to require that any work be carried out during the additional paternity leave period, nor any right on P to work during the additional paternity leave period.

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

Application of terms and conditions during additional paternity leave

27.—(1) During the period of additional paternity leave, P—

(a) 1992 c. 4. Section 35(3)(a)(i) was amended by the Work and Families Act 2006, Schedule 1, paragraph 6.
(b) Section 165(4) was amended by the Work and Families Act 2006, Schedule 1, paragraph 7(1) and (3).
(c) Section 171ZN was inserted by section 2 of the Employment Act 2002 (c. 22) and amended by the Work and Families Act 2006, Schedule 1, paragraph 21(2) and (3).

- (a) is entitled to the benefit of all of the terms and conditions of employment which would have applied if P had not been absent, and
- (b) is bound by any obligations arising under those terms and conditions, subject only to the exception in section 80C(1)(b) of the 1996 Act^(a).

(2) In paragraph (1)(a), “terms and conditions of employment” has the meaning given by section 80C(5) of the 1996 Act, and accordingly does not include terms and conditions about remuneration.

(3) For the purposes of section 80C of the 1996 Act, only sums payable to P by way of wages or salary are to be treated as remuneration.

(4) In the case of accrual of rights under an employment-related benefit scheme within the meaning given by paragraph 7 of Schedule 5 to the Social Security Act 1989^(b), nothing in paragraph (1)(a) shall be taken to impose a requirement which exceeds the requirements of paragraph 5A of that Schedule.

Redundancy during additional paternity leave

28.—(1) This regulation applies where, during P’s additional paternity leave period, it is not practicable by reason of redundancy for E to continue to employ P under P’s existing contract of employment.

(2) Where there is a suitable alternative vacancy, P is entitled to be offered (before the end of P’s employment under P’s existing contract) alternative employment with E or E’s successor, or an associated employer, under a new contract of employment which complies with paragraph (3) and takes effect immediately on the ending of P’s 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 P and appropriate for P to do in the circumstances, and
- (b) its provisions as to the capacity and place in which P is to be employed, and as to the other terms and conditions of P’s employment, are not substantially less favourable to P than if P had continued to be employed under the previous contract.

Dismissal during additional paternity leave

29. Where P is dismissed after P’s additional paternity leave period has begun but before the time when (apart from this regulation) that period would end, the period ends at the time of the dismissal.

Early return from additional paternity leave period

30.—(1) Subject to regulations 13(1) and 23(1) (variation or cancellation of leave in the event of death of the mother or adopter), where, after P’s additional leave period has begun, P intends to return to work earlier than the end of P’s additional paternity leave period, P must give E at least six weeks’ notice of the date on which P intends to return.

(2) If P attempts to return to work earlier than the end of P’s additional paternity leave period without complying with paragraph (1), E is entitled to postpone P’s return to a date such as will secure, subject to paragraph (5), that E has six weeks’ notice of P’s return.

(3) Where P complies with P’s obligations in paragraph (1), or where E has postponed P’s return in the circumstances described in paragraph (2), if P then decides to return to work—

(a) Section 80C was inserted by section 1 of the Employment Act 2002 (c.22) and subsequently amended by the Work and Families Act 2006 (c.18), section 5.

(b) 1989 c.24. This has been prospectively amended by the Pension Schemes Act 1993 (c. 48), section 190, Schedule 7, paragraph 2, from a day to be appointed.

- (a) earlier than the original return date, P must give E not less than six weeks' notice of the date on which P now intends to return;
- (b) later than the original return date, P must give E not less than six weeks' notice ending with the original return date.

(4) In paragraph (3) the "original return date" means the date which P notified E as the date of P's return to work under paragraph (1) or the date to which P's return was postponed by E under paragraph (2).

(5) In a case where P's return to work has been postponed under paragraph (2) and P—

- (a) has been notified that P is not to return to work before the date to which P's return was postponed, and
- (b) returns to work before that date,

E is under no contractual obligation to pay P's remuneration until the date to which P's return was postponed.

(6) This regulation does not apply in a case where E fails to notify P of the date on which P's additional paternity leave period ends, in accordance with regulation 8, regulation 8 as modified by regulation 10, regulation 18 or regulation 18 as modified by regulation 20 (confirmation of period of leave), as applicable.

Right to return after additional paternity leave

31.—(1) In a case where P returns to work after a period of additional paternity leave, lasting no longer than 26 weeks, which was—

- (a) an isolated period of leave, or
- (b) the last of two or more consecutive periods of statutory leave, which did not include any period of additional maternity leave or additional adoption leave or a period of parental leave of more than four weeks,

P is entitled to return from leave to the job in which P was employed before P's absence.

(2) In a case where P returns to work after a period of additional paternity leave not falling within the description in paragraph (1)(a) or (b) above, P is entitled to return from leave to the job in which P was employed before P's absence, or, if it is not reasonably practicable for E to permit P to return to that job, to another job which is both suitable for P and appropriate for P to do in the circumstances.

(3) The reference in paragraphs (1) and (2) to the job in which P was employed before P's absence is a reference to the job in which P was employed—

- (a) if P's return is from an isolated period of additional paternity leave, immediately before that period began,
- (b) if P's return is from consecutive periods of statutory leave, immediately before the first such period.

(4) This regulation does not apply where regulation 28 applies.

Incidents of the right to return after additional paternity leave

32.—(1) P's right to return under regulation 31 is a right to return—

- (a) with P's seniority, pension rights and similar rights as they would have been if P had not been absent, and
- (b) on terms and conditions not less favourable than those which would have applied if P had not been absent.

(2) In the case of accrual of rights under an employment-related benefit scheme within the meaning given by paragraph 7 of Schedule 5 to the Social Security Act 1989, nothing in paragraph (1)(a) shall be taken to impose a requirement which exceeds the requirements of paragraphs 5 to 6 of that Schedule.

(3) The provisions in paragraph (1)(a) for P to be treated as if P had not been absent refer to P's absence—

- (a) if P's return is from an isolated period of additional paternity leave, since the beginning of that period,
- (b) if P's return is from consecutive periods of statutory leave, since the beginning of the first such period.

Protection from detriment

33.—(1) P 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 E because—

- (a) P took, sought to take or made use of the benefits of additional paternity leave;
- (b) E believed that P was likely to take additional paternity leave;
- (c) P failed to return after a period of additional paternity leave in a case where—
 - (i) E did not notify P, in accordance with regulations 8, 8 as modified by regulation 10, 18, 18 as modified by regulation 20, or otherwise, of the date on which that period ended, and P reasonably believed that the period had not ended, or
 - (ii) E gave P less than 28 days' notice of the date on which the period would end, and it was not reasonably practicable for P to return on that date;
- (d) P undertook, considered undertaking or refused to undertake work in accordance with regulation 26.

(2) For the purposes of paragraph (1)(a), P makes use of the benefits of additional paternity leave if, during P's additional paternity leave period, P benefits from any of the terms and conditions of P's employment preserved by section 80C of the 1996 Act and regulation 27 during that period.

(3) Paragraph (1) does not apply where the detriment in question amounts to dismissal within the meaning of Part 10 of the 1996 Act.

Unfair dismissal

34.—(1) In a case where P is dismissed, P is entitled under section 99 of the 1996 Act(a) to be regarded for the purpose of Part 10 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 P is redundant and regulation 28 has not been complied with.

(2) In a case where P is dismissed, P shall also be regarded for the purposes of Part 10 of the 1996 Act as unfairly dismissed if—

- (a) the reason (or, if more than one, the principal reason) for the dismissal is that P was redundant,
- (b) it is shown that the circumstances constituting the redundancy applied equally to one or more employees in the same undertaking who had positions similar to that held by P and who have not been dismissed by E, and
- (c) it is shown that the reason (or if more than one, the principal reason) for which P was selected for dismissal was a reason of a kind specified in paragraph (3).

(3) The kinds of reason referred to in paragraph (1) and (2) are reasons connected with any of the following facts—

- (a) that P took, sought to take or made use of the benefits of, additional paternity leave;

(a) Section 99 was substituted by the Employment Relations Act 1999, Schedule 4, Part 3, paragraphs 5 and 16, and amended by the Employment Act 2002, Schedule 7, paragraphs 24 and 33 and by the Work and Families Act 2006, Schedule 1, paragraph 41.

- (b) that E believed that P was likely to take additional paternity leave;
- (c) that P failed to return after a period of additional paternity leave in a case where—
 - (i) E did not notify P, in accordance with regulations 8, 8 as modified by regulation 10, 18, 18 as modified by regulation 20, or otherwise, of the date on which that period ended, and P reasonably believed that the period had not ended, or
 - (ii) that E gave P less than 28 days' notice of the date on which the period would end, and it was not reasonably practicable for P to return on that date; or
- (d) that P undertook, considered undertaking or refused to undertake work in accordance with regulation 26.

(4) For the purposes of paragraph (3)(a), P makes use of the benefits of additional paternity leave if, during P's additional paternity leave period, P benefits from any of the terms and conditions of P's employment preserved by section 80C of the 1996 Act and regulation 27 during that period.

(5) Paragraph (1) does not apply in relation to P if—

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

(6) 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 (5), it is for E to show that the provision in question was satisfied in relation to the complainant.

Contractual rights to additional paternity leave

35.—(1) This regulation applies where P is entitled to additional paternity leave (referred to in paragraph (2) as a “statutory right”) and also to a right which corresponds to that right and which arises under P's contract of employment or otherwise.

(2) In a case where this regulation applies—

- (a) P 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

36. Where—

- (a) under Chapter 2 of Part 14 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 12 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 additional paternity leave, and
- (c) remuneration is payable to the employee in respect of that week under the employee's contract of employment, but the amount payable is less than the amount that would be payable if the employee 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.

	<i>Name</i>
	[Title]
Date	Department for Business, Innovation & Skills

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement the powers in the Work and Families Act 2006 to introduce a new entitlement for employees who are fathers or partners of mothers or adopters to take additional paternity leave in the first year of their child's life or the first year after the child's placement for adoption. The relevant provisions are incorporated by that Act into the Employment Rights Act 1996 ("the 1996 Act").

The Regulations confer the right to take additional paternity leave, following the birth of a child, to fathers or spouses and partners (of either sex) of the child's mother. In the case of adoption, the entitlement is granted to persons who have been matched with the child for adoption and who are spouses or partners (of either sex) of the adopter who has elected to take adoption leave (defined as "the adopter" for the purpose of these Regulations).

Regulation 4 and 14 set out the conditions for entitlement for additional paternity leave (birth) and (adoption) respectively. Certain conditions apply to the person claiming the entitlement ("the claimant"), others to the mother or adopter. The claimant must satisfy substantive requirements, such as continuous employment, relationship with the mother or adopter and with the child, as well procedural requirements such as giving appropriate notice to the claimant's employer. For the claimant to qualify for additional paternity leave (birth), the mother must be entitled to one or more of maternity leave, statutory maternity pay or maternity allowance. For the claimant to qualify for additional paternity leave (adoption), the adopter must be entitled to one or more of adoption leave and statutory adoption pay. In respect of both birth and adoption, the mother or adopter must have returned to work for the claimant's entitlement to arise.

Regulations 5 and 15 set out the options for when and how the leave may be taken (in respect of additional paternity leave (birth) and additional paternity leave (adoption) respectively). In particular they indicate the maximum and minimum length of leave which may be taken (a maximum of 26 weeks and minimum of 2 weeks), the fact that it may only be taken in multiples of complete weeks and the period after the birth or adoption of the child within which the leave may be taken (the period beginning 20 weeks after the birth or placement for adoption and ending 12 months after the birth or placement for adoption).

Regulations 6 and 16 (in respect of additional paternity leave: birth, and additional paternity leave: adoption respectively) set out the notice and evidential requirements with which the claimant must comply. These include information regarding both the claimant and the mother or adopter, and declarations from both the claimant and the mother or adopter.

Regulations 7 and 17 (in respect of additional paternity leave (birth) and additional paternity leave (adoption) respectively) set out the notice and process requirements that apply if the claimant wishes, before taking additional paternity leave, to cancel the leave or vary the dates the claimant had chosen for the additional paternity leave period to begin and end.

Regulations 8 and 18 (in respect of additional paternity leave (birth), and additional paternity leave (adoption) respectively) require that the employer must confirm the dates of the start and end of the leave within 28 days of receiving the claimant's notice. Regulations 9 and 19 (in respect of additional paternity leave (birth) and additional paternity leave (adoption) respectively) set out when the leave commences.

In circumstances where the mother, or the adopter of the child who has chosen to take adoption leave, has died within 12 months after the date of the child's birth or placement for adoption, the provisions of the Regulations apply with various modifications. In such a case the claimant's entitlement may be to a longer period of leave starting earlier than it would otherwise have done and with different notification requirements.

Regulations 10 and 20 (in respect of birth and adoption respectively) set out the provisions of the Regulations which are modified in the case of the death of the mother or adopter of the child. The requirements which must be satisfied by the child's mother or adopter under regulations 4 and 14 are modified. The requirement that the mother or adopter must have returned to work does not

apply. Further, the mother or adopter is deemed to satisfy the requirement of entitlement to one or more of, in the mother's case, maternity leave, statutory maternity pay or maternity allowance and in the adopter's case, adoption leave or statutory adoption pay, if the adopter or mother satisfied the condition before death or would have done, but for the death.

Regulation 24 deals with cases where the child dies (in respect of birth and adoption) or where a placement ends (in respect of adoption) during additional paternity leave or after the claimant has notified the employer of the claimant's intention to take additional paternity leave. In such cases, the claimant's entitlement comes to an end after a period of eight weeks following the week of the child's death or the end of the child's placement, unless there are only eight weeks of leave remaining in which case the additional paternity leave period ends on the date notified by the claimant.

Regulations 25 to 31 contain provisions applicable in relation to additional paternity leave (birth and adoption). Regulation 25 sets out criteria for determining when the mother or adopter has returned to work. If the mother or adopter was entitled to maternity or adoption leave, the relevant date is when this leave ends. If the mother or adopter was entitled to statutory pay (maternity allowance, statutory maternity pay or statutory adoption pay) the relevant date is when this is no longer payable. In cases where they were eligible for both leave and pay then the relevant date is when both the leave has ended and they no longer eligible for pay.

Regulations 28 and 29 deal with cases in which an employee becomes redundant or is dismissed during an additional paternity leave period. Regulation 30 deals with cases where an employee, who is on additional paternity leave intends to return to work before the end of additional paternity leave. Regulations 31 and 32 provide for an employee's right to return to work after taking leave, distinguishing the case where the leave was an isolated period of leave or taken with other types of statutory leave from other cases.

Regulations 33 and 34 provide that an employee entitled to additional paternity leave is protected against detriment or dismissal attributable to the fact they took or sought to take such leave. Regulation 35 governs the relationship between an employee's right to additional paternity leave under these Regulations and any corresponding leave rights arising from the employment contract. Regulation 36 deals with the calculation of a week's pay for an employee on additional paternity leave.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available at <http://www.berr.gov.uk/files/file54236.pdf> and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.

© Crown copyright 2010

Corrected reprint

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

This draft Statutory Instrument supersedes the draft of the same title which was laid before Parliament on 19 January 2010 and published on 22 January 2010. It is being issued free of charge to all known recipients of that draft Statutory Instrument.

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

2010 No. 0000

TERMS AND CONDITIONS OF EMPLOYMENT

The Additional Paternity Leave Regulations 2010

£5.50