

Draft Regulations laid before Parliament under section 236(3) of the Employment Rights Act 1996 (c. 18), for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2024 No.

TERMS AND CONDITIONS OF EMPLOYMENT

**The Maternity Leave, Adoption Leave and Shared Parental Leave
(Amendment) Regulations 2024**

Made - - - -

Coming into force in accordance with regulation 1(2) and (3)

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 49D, 71(1), (4) and (7), 73(1), (4) and (7), 74(1) and (3), 75(1), 75A(1), (3) and (7), 75B(1), (4) and (8), 75C(1) and (2), 75D(1), 75E(1), 75G(1), 75H(17), 75I(1) and (5), 75J and 75K(1) of the Employment Rights Act 1996(a).

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

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Maternity Leave, Adoption Leave and Shared Parental Leave (Amendment) Regulations 2024.

(2) This regulation, regulations 2 to 5 and regulation 7 come into force on 6th April 2024.

(3) Regulations 6 and 8 come into force immediately after the regulations specified in paragraph (2).

(4) The amendments made by regulations 4, 5 and 7 have the same extent as the provisions amended.

(5) The amendments made by regulations 6 and 8 extend to England and Wales and Scotland.

Interpretation

2. In these Regulations—

“the 1999 Regulations” means the Maternity and Parental Leave etc. Regulations 1999(c);

(a) 1996 c. 18; section 49D was inserted by the Protection from Redundancy (Pregnancy and Family Leave) Act 2023, sections 74, 75C and 75J of the 1996 Act were amended by section 2 of the 2023 Act. See section 75(2) of this Act for the definition of “prescribed”.

(b) Section 236(3) was amended by the Protection from Redundancy (Pregnancy and Family Leave) Act 2023, section 1(2).

(c) S.I. 1999/3312, amended by S.I. 2006/2014; there are other amending instruments but none is relevant.

“the 2002 Regulations” means the Paternity and Adoption Leave Regulations 2002(a);

“the 2014 Regulations” means the Shared Parental Leave Regulations 2014(b).

Application

3.—(1) The amendments of the 1999 Regulations made by regulation 4 have effect where the employee’s statutory maternity leave period ends on or after 6th April 2024 unless paragraph (2) applies.

(2) This paragraph applies to the amendments made by regulation 4 that make provision for the protected period of pregnancy (regulation 10(1)(a) and (1A) of the 1999 Regulations), which have effect where the employer is informed of the pregnancy on or after 6th April 2024 in accordance with regulation 10(1A) of the 1999 Regulations.

(3) The amendments of the 2002 Regulations made by regulation 5 have effect where the employee’s statutory adoption leave period ends on or after 6th April 2024.

(4) The amendments of the 2014 Regulations made by regulation 7 have effect where the employee’s shared parental leave ends on or after 6th April 2024 unless paragraph (5) applies.

(5) This paragraph applies to the amendments made by regulation 7 that make provision for the additional protected period (regulation 39(1)(b), (1A) and (1B) of the 2014 Regulations), which have effect where—

- (a) the employee has taken a period of at least six consecutive weeks of shared parental leave, in accordance with regulation 39(1A) of the 2014 Regulations, and
- (b) the first day of that period of leave is on or after 6th April 2024.

(6) In this regulation—

“shared parental leave” has the same meaning as in the 2014 Regulations(c);

“statutory adoption leave period” has the same meaning as in the 2002 Regulations(d);

“statutory maternity leave period” has the same meaning as in the 1999 Regulations(e).

Amendment of the 1999 Regulations

4. Regulation 10 of the 1999 Regulations (redundancy during maternity leave) is amended as follows—

- (a) in the heading, for “during” substitute “: pregnancy and”;
- (b) for paragraph (1) substitute—

“(1) This regulation applies where it is not practicable by reason of redundancy for an employer to continue to employ an employee under her existing contract of employment during—

- (a) the protected period of pregnancy;
- (b) the statutory maternity leave period; or
- (c) the additional protected period.

(1A) For the purposes of paragraph (1)(a) the protected period of pregnancy—

(a) S.I. 2002/2788 to which there are amendments not relevant to these Regulations.
(b) S.I. 2014/3050 to which there are amendments not relevant to these Regulations.
(c) For the definition of shared parental leave, see regulation 3(1) of S.I. 2014/3050.
(d) For the definition of “statutory adoption leave period”, see regulation 2(1) of S.I. 2002/2788 as amended by S.I. 2006/2014.
(e) For the definition of “statutory maternity leave period”, see regulation 2(1) of S.I. 1999/3312 as amended by S.I. 2006/2014.

- (a) begins, subject to paragraph (c), when the employer is informed of the pregnancy which may be after the end of the pregnancy,
- (b) ends—
 - (i) if the employee has the right to statutory maternity leave, on the day on which the statutory maternity leave period commences, or
 - (ii) if the employee does not have the right to statutory maternity leave, at the end of the period of two weeks beginning with the end of the pregnancy, but,
- (c) does not begin if the employer is informed of the pregnancy on or after the day on which, had the employer been informed of the pregnancy earlier, the protected period of pregnancy would have ended in accordance with either paragraph (b)(i) or (ii).

(1B) For the purposes of paragraph (1)(c) the additional protected period—

- (a) begins with the day after the last day of the employee’s statutory maternity leave period;
- (b) continues during any period of continuous employment that includes the statutory maternity leave period referred to in sub-paragraph (a); and
- (c) ends immediately before the relevant day.

(1C) For the purposes of paragraph (1B)(c) the relevant day—

- (a) where paragraph (1D) does not apply, is the day after a period of 18 months beginning with the first day of the expected week of childbirth;
- (b) where paragraph (1D) applies, is the day after a period of 18 months beginning with the day that childbirth occurred.

(1D) This paragraph applies where, before the end of the statutory maternity leave period or, if that is not reasonably practicable, as soon as is reasonably practicable thereafter, the employer has been notified by the employee of the day that childbirth occurred.

(1E) Notification under paragraph (1D) must be given in writing if the employer so requests.”.

Amendment of the 2002 Regulations

5. Regulation 23 of the 2002 Regulations (redundancy during adoption leave) is amended as follows—

- (a) in the heading, for “Redundancy during” substitute “Redundancy:”;
- (b) for paragraph (1) substitute—

“(1) This regulation applies where it is not practicable by reason of redundancy for an employer to continue to employ an employee under their existing contract of employment during—

- (a) the statutory adoption leave period, or
- (b) the additional protected period.

(1A) For the purposes of paragraph (1)(b) the additional protected period—

- (a) begins with the day after the last day of the employee’s statutory adoption leave period;
- (b) continues during any period of continuous employment that includes the statutory adoption leave period referred to in sub-paragraph (a); and

(c) ends immediately before the relevant day.

(1B) For the purposes of paragraph (1A)(c) the relevant day is the day after a period of 18 months beginning with the day the child is placed with the employee for adoption.”.

Amendment of the Paternity and Adoption Leave (Adoption from Overseas) Regulations 2003

6. In the Paternity and Adoption Leave (Adoption from Overseas) Regulations 2003(a), after regulation 12 insert—

“Redundancy: adoption leave

13. In regulation 23(1B) of the Leave Regulations, for “is placed with the employee for adoption” substitute “enters Great Britain”.”.

Amendment of the 2014 Regulations

7. Regulation 39 of the 2014 Regulations (redundancy during shared parental leave) is amended as follows—

- (a) in the heading, for “during” substitute “:”;
- (b) for paragraph (1) substitute—

“(1) Subject to paragraph (1C), this regulation applies where it is not practicable by reason of redundancy for an employer to continue to employ an employee under their existing contract of employment during—

- (a) a period in which the employee is taking shared parental leave; or
- (b) where the employee is not on shared parental leave, the additional protected period.

(1A) For the purposes of paragraph (1)(b) the additional protected period—

- (a) begins with the day after the employee has taken six consecutive weeks of shared parental leave;
- (b) continues during any period of continuous employment that includes the shared parental leave referred to in sub-paragraph (a); and
- (c) ends immediately before the relevant day.

(1B) The relevant day referred to in paragraph (1A)(c) is the day after a period of 18 months beginning with the day on which the child was—

- (a) born, where the entitlement to shared parental leave arises under Part 2 (entitlement to shared parental leave (birth)) of these Regulations;
- (b) placed with the employee for adoption, where the entitlement to shared parental leave arises under Part 3 (entitlement to shared parental leave (adoption)) of these Regulations.

(1C) This regulation does not apply where either of the following regulations applies—

- (a) regulation 10 of the Maternity and Parental Leave etc. Regulations 1999 (b); or
- (b) regulation 23 of the Paternity and Adoption Leave Regulations 2002(c).”.

(a) S.I. 2003/921, to which there are amendments not relevant to these Regulations.

(b) S.I. 1999/3312.

(c) S.I. 2002/2788, to which there are amendments not relevant to these Regulations.

Amendment of the Shared Parental Leave and Paternity and Adoption Leave (Adoptions from Overseas) Regulations 2014

8. In the Shared Parental Leave and Paternity and Adoption Leave (Adoptions from Overseas) Regulations 2014(a), after regulation 20 insert—

“Modifications to the Shared Parental Leave Regulations 2014 for the purposes of adoptions from overseas

20A. In regulation 39 (redundancy: shared parental leave), for paragraph (1B) substitute—

“(1B) The relevant day referred to in paragraph (1A)(c) is the day after a period of 18 months beginning with the day on which the child enters Great Britain.””.

Name
Title
Department for Business and Trade

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Maternity and Parental Leave etc. Regulations 1999 (S.I. 1999/3312), the Paternity and Adoption Leave Regulations 2002 (S.I. 2002/2788) and the Shared Parental Leave Regulations 2014 (S.I. 2014/3050). They also amend the Paternity and Adoption Leave (Adoption from Overseas) Regulations 2003 (S.I. 2003/921) and the Shared Parental Leave and Paternity and Adoption Leave (Adoptions from Overseas) Regulations 2014 (S.I. 2014/3092) to ensure equivalent provision for those adopting children from overseas.

The amendments extend existing requirements that apply to employers when redundancy situations arise where an employee is on maternity, adoption or shared parental leave, so that those requirements can also apply during pregnancy and for a period of time after that leave has ended. For those taking shared parental leave who have not taken maternity or adoption leave, there is a six-week threshold of continuous leave that needs to be met for the requirements to apply for a period of time after shared parental leave has ended. Where the six-week threshold is not met, the requirements apply during shared parental leave.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen. A full impact assessment has been prepared in relation to the Protection from Redundancy (Pregnancy and Family Leave) Act 2023 and to which this instrument gives effect, and a copy is available at <https://bills.parliament.uk/bills/3191/publications>.

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(a) S.I. 2014/3092, to which there are amendments not relevant to these Regulations.

£5.78

<http://www.legislation.gov.uk/id/ukdsi/2024/9780348254846>

ISBN 978-0-34-825484-6



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