
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 as 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,

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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.