

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

2014 No. 0000

TERMS AND CONDITIONS OF EMPLOYMENT

The Paternity and Adoption Leave
(Amendment) (No. 2) Regulations 2014

Made - - - - - ***
Coming into force - - - - - 5th April 2015

A draft of these Regulations was laid before Parliament in accordance with section 236(3) of the Employment Rights Act 1996(1), for approval by resolution of each House of Parliament.

The Secretary of State, in exercise of the powers conferred by sections 75A(1) and (1A), 75D(2), 80B(1), (5)(aa), (6A) and (6B), of the Employment Rights Act 1996(2), makes the following Regulations.

Citation and commencement

1. These Regulations may be cited as the Paternity and Adoption Leave (Amendment) (No. 2) Regulations 2014 and come into force on 5th April 2015.

Application

2.—(1) The amendments made by these Regulations have effect only in relation to children matched with a person who is notified of having been matched on or after 5th April 2015.

(2) For the purposes of paragraph (1), “matched” has the meaning given in regulation 2 of the Paternity and Adoption Leave Regulations 2002(3) (as amended by regulation 4 of these Regulations).

(1) 1996 c. 18. Section 236(3) was amended by the Children and Families Act 2014 (c. 6), section 117(2); there are other amending instruments but none is relevant.

(2) Sections 75A and 75D were inserted by the Employment Act 2002 (c. 22), section 3. Section 75A(1A) was inserted by the Children and Families Act 2014, section 121(1). Section 80B was inserted by the Employment Act 2002, section 1. Section 80B(5)(aa) was inserted by the Children and Families Act 2014, section 121(2)(a). Section 80B(6A) and (6B) was inserted by the Children and Families Act 2014, section 121(2)(b).

(3) S.I. 2002/2788.

Amendments to the Paternity and Adoption Leave Regulations 2002

3. The Paternity and Adoption Leave Regulations 2002 are amended as follows.

4.—(1) Regulation 2 (interpretation) is amended as follows.

(2) In paragraph (1) after the definition of “paternity leave” insert—

““placed for adoption” means—

- (a) placed for adoption under the Adoption and Children Act 2002(4) or the Adoption and Children (Scotland) Act 2007(5); or
- (b) placed in accordance with section 22C of the Children Act 1989(6) with a local authority foster parent who is also a prospective adopter;

“prospective adopter” means a person who has been approved as suitable to adopt a child and has been notified of that decision in accordance with regulation 30B(4) of the Adoption Agencies Regulations 2005(7);”.

(3) For paragraph (4) substitute—

“(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 either individually or jointly with another person;
- (b) in a case where sub-paragraph (a) applies, 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, regulation 28(3) of the Adoption Agencies (Wales) Regulations 2005(8), or regulation 8(5) of the Adoption Agencies (Scotland) Regulations 2009(9);
- (c) a person is also matched with a child for adoption when a decision has been made in accordance with regulation 22A of the Care Planning, Placement and Case Review (England) Regulations 2010(10) and an adoption agency has identified that person with whom the child is to be placed in accordance with regulation 12B of the Adoption Agencies Regulations 2005(11);
- (d) in a case where paragraph (c) applies, a person is notified of having been matched with a child on the date on which that person receives notification in accordance with regulation 12B(2)(a) of the Adoption Agencies Regulations 2005 of the decision to place for adoption the child with that person.

(4A) For the purposes of these Regulations, a person elects to be a child’s adopter, in a case where the child is matched with him and another person jointly, if he and that person agree, at the time at which they are matched that he and not the other person will be the adopter.”.

5.—(1) Regulation 8 (entitlement to paternity leave: adoption) is amended as follows.

(4) 2002 c. 38.

(5) 2007 asp 4.

(6) 1989 c.41. Section 22C was inserted by the Children and Young Persons Act 2008, section 8(1), and subsections (9A) to (C) were inserted by the Children and Families Act 2014, section 2.

(7) S.I. 2005/389; regulation 30B was inserted by S.I. 2013/985.

(8) S.I. 2005/1313.

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

(10) S.I. 2010/959; amended by S.I. 2014/1556; there is another amending instrument but it is not relevant.

(11) Regulation 12B was inserted by S.I. 2014/1556.

- (2) In paragraph (1A)(12)—
- (a) omit “or” at the end of sub-paragraph (a);
 - (b) after sub-paragraph (b), insert—
 - “; or
 - (c) has already taken paternity leave in relation to the child as a result of the child being placed with a prospective adopter who is at the time of the placement the employee’s spouse, civil partner or partner.”.

6.—(1) Regulation 15 (entitlement to ordinary adoption leave) is amended as follows.

- (2) In paragraph (1), for “An” substitute “Subject to paragraph (1A), an”.
- (3) After paragraph (1) insert—
- “(1A) An employee is not entitled to be absent from work under paragraph (1) in relation to a child if the employee has already taken ordinary adoption leave as a result of that child being placed, or expected to be placed, with the employee under section 22C of the Children Act 1989.”.

7.—(1) Regulation 22 (disrupted placement in the course of adoption leave)(13) is amended as follows.

- (2) For paragraph (1)(b)(ii) substitute—
- “(ii) the child is returned after being placed for adoption”.
- (3) After paragraph (3) insert—
- “(3A) In paragraph (1) “returned after being placed for adoption” means—
- (a) returned under sections 31 to 35 of the Adoption and Children Act 2002;
 - (b) in Scotland, returned to the adoption agency, adoption society or nominated person in accordance with section 25(6) of the Adoption and Children (Scotland) Act 2007; or
 - (c) where the child is placed in accordance with section 22C of the Children Act 1989, returned to the adoption agency following a termination of the placement.”.

Date

Name
Parliamentary Under Secretary of State for
Employment Relations and Consumer Affairs
Department for Business, Innovation and Skills

(12) Paragraph (1A) was inserted by [S.I. 2014/2112](#).

(13) Regulation 22 was amended by [S.I. 2014/2112](#).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Paternity and Adoption Leave Regulations 2002 ([S.I. 2002/2788](#)) (“the Leave Regulations”). The Leave Regulations confer a right to take paternity leave and adoption leave in connection with the adoption of a child.

These Regulations amend the definition of matched for adoption and introduce a definition of “placed for adoption” in the Leave Regulations to include placement under section 22C of the Children Act 1989. They provide new rights to adoption leave to local authority foster parents who are prospective adopters if they have been notified that a child is to be placed with them under section 22C of the Children Act 1989 following consideration in accordance with section 22C(9B)(c) of that Act. The Regulations also provide new rights to paternity leave to the spouses, civil partners and partners of these prospective adopters.

Regulation 5 amends the Leave Regulations so that an employee cannot take paternity leave in relation to a child if they have already taken such leave in relation to that child.

Regulation 6 amends the Leave Regulations so an employee cannot take adoption leave in relation to a child if they have already taken such leave in relation to that child.

Regulation 7 amends the Leave Regulations so that an employee’s adoption leave may terminate early if the child’s placement in accordance with section 22C of the Children Act 1989 is terminated and the child is returned to the adoption agency.

A separate impact assessment has not been prepared for these Regulations. These Regulations are part of a package of legislative measures and the relevant impact assessment is the *Modern Workplaces: shared parental leave and pay administration consultation - impact assessment* which was published in February 2013. A copy of that impact assessment can be obtained from the Department for Business, Innovation and Skills, Labour Market Directorate, 1 Victoria Street, London, SW1H 0ET. Copies have also been placed in the libraries of both Houses of Parliament.