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STATUTORY INSTRUMENTS

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**2020 No. 249**

**The Parental Bereavement Leave Regulations 2020**

**PART 2**

**ENTITLEMENT TO PARENTAL BEREAVEMENT LEAVE**

**Entitlement to parental bereavement leave**

**4.—(1)** An employee is entitled to be absent from work to take parental bereavement leave if he or she—

- (a) satisfies one of the conditions specified in paragraph (2), and
- (b) complies with the notice requirements in regulation 6.

(2) The conditions referred to in paragraph (1) are that, at the date of C's death, the employee is—

- (a) C's parent;
- (b) C's natural parent and named in an order made pursuant to section 51A(2)(a) of the Adoption and Children Act 2002<sup>(1)</sup> or section 11(3)(aa) of the Children (Scotland) Act 1995<sup>(2)</sup>, provided that such an order has not subsequently been revoked or discharged;
- (c) a person with whom C has been placed for adoption, for so long as that placement has not been disrupted, as mentioned in paragraph (3);
- (d) an adopter—
  - (i) with whom C was living, following C's entry into Great Britain from outside the United Kingdom in connection with or for the purposes of adoption which does not involve the placement of C for adoption under the law of any part of the United Kingdom, and
  - (ii) who has received official notification in respect of C;
- (e) an intended parent of C;
- (f) C's parent in fact; or
- (g) the partner of P.

(3) For the purposes of paragraph (2)(c), a placement has been disrupted—

- (a) when C has been returned under sections 31 to 35 of the Adoption and Children Act 2002<sup>(3)</sup>,
- (b) in Scotland, when C has been 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) when C's placement—

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<sup>(1)</sup> Section 51A was inserted by the Children and Families Act 2014, section 9.

<sup>(2)</sup> Section 11(3)(aa) was inserted by the Adoption and Children (Scotland) Act 2007, section 107.

<sup>(3)</sup> Sections 32, 34 and 35 were amended by the Children and Families Act 2014, Schedule 2, Part 2, paragraphs 63 and 64 and by [S.I. 2016/413](#).

- (i) with a local authority foster parent who is also a prospective adopter in accordance with section 22C of the Children Act 1989 following consideration in accordance with subsection (9B)(c) of that section, or
  - (ii) with a prospective adopter in accordance with section 81 of the Social Services and Well-being (Wales) Act 2014,
- has been terminated.
- (4) Subject to paragraph (6), a person is C’s parent in fact if that person, for a continuous period of at least four weeks ending with the day on which C dies—
- (a) lived with C in the person’s own home, and
  - (b) had day to day responsibility for C’s care.
- (5) For the purposes of the continuous period mentioned in paragraph (4), no account is to be taken of any absences of a temporary or intermittent nature.
- (6) A person is not to be regarded as C’s parent in fact if—
- (a) C is in the care of that person in premises in which any parent of C’s, or any person who is not a parent of C’s but who has responsibility for C, is living, or
  - (b) that person was or is entitled to receive remuneration, whether by way of wages or otherwise, in respect of the care of C.
- (7) A person has responsibility for C, for the purposes of paragraph (6)(a), if the person—
- (a) has parental responsibility, within the meaning of section 3 of the Children Act 1989, or
  - (b) in Scotland, has parental responsibilities or parental rights, within the meaning of sections 1 and 2 of the Children (Scotland) Act 1995(4).
- (8) For the purposes of paragraph (6)(b), the following payments are not to be regarded as remuneration—
- (a) any fee or allowance paid by a local authority to a foster parent;
  - (b) payments wholly or mainly intended to reimburse the person for expenses which arise from, or are expected to arise from, the person’s care of C;
  - (c) amounts received pursuant to the terms of a will, trust or similar instrument which makes provision in respect of C’s care.
- (9) In this regulation—
- (a) “P” means any person who satisfies one of the conditions in paragraph (2)(a) to (f);
  - (b) “partner” means a person (whether of a different sex or the same sex) who lives with C and P in an enduring family relationship but is not a relative of P of a kind specified in sub-paragraph (c);
  - (c) the relatives of P referred to in sub-paragraph (b) are P’s parent, grandparent, sister, brother, aunt or uncle;
  - (d) references to relationships in sub-paragraph (c)—
    - (i) 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
    - (ii) include the relationship of a child with his adoptive, or former adoptive, parents, but do not include any other adoptive relationships.

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(4) 1995 c. 36; sections 1 and 2 were amended by the Human Fertilisation and Embryology Act 2008, Schedule 6, Part 2, paragraphs 48 and 49.

(10) Where an employee is eligible to take parental bereavement leave under this regulation as a result of the death of more than one child, the employee is entitled to parental bereavement leave in respect of each child.

### **Options in respect of parental bereavement leave**

5.—(1) The minimum period of parental bereavement leave which may be taken by an employee is one week.

(2) An employee may choose to take either one or two weeks' parental bereavement leave.

(3) Where an employee chooses to take two weeks' parental bereavement leave, the weeks need not be consecutive.

(4) Parental bereavement leave may be taken at any time within the period of 56 weeks beginning with the date of C's death.

(5) Paragraphs (1), (2) and (3) of this regulation are subject to regulation 8.

### **Notice requirements for parental bereavement leave**

6.—(1) An employee must give his or her employer notice of his or her intention to take any absence from work as parental bereavement leave specifying—

- (a) the date of C's death,
- (b) the date on which the employee chooses any period of absence to begin, and
- (c) whether the employee intends that period of absence to be a period of one or two weeks' parental bereavement leave.

(2) Where any week which an employee intends to be treated as parental bereavement leave begins within Period A, notice provided for in paragraph (1) must be given to the employer—

- (a) before the employee is due to start work on the employee's first day of absence from work in that week, or
- (b) in a case where it is not reasonably practicable for the employee to give notice in accordance with sub-paragraph (a), as soon as is reasonably practicable.

(3) Where any week which an employee intends to be treated as parental bereavement leave begins within Period B, notice provided for in paragraph (1) must be given to the employer at least one week before the start of that week.

(4) Where an employee gives notice in accordance with paragraph (2) or (3) to take a period of parental bereavement leave which includes a week which begins—

- (a) in Period A, the employee may cancel that week's parental bereavement leave by giving notice to the employer no later than the time on the first day of that week at which the employee would have been due to start work if the employee was not taking parental bereavement leave;
- (b) in Period B, the employee may cancel that week's parental bereavement leave by giving notice to the employer at least one week before the start of that week.

(5) An employee may not cancel any week of parental bereavement leave which has already commenced.

(6) In this regulation—

“Period A” means the period of 56 days beginning with the date of C's death;

“Period B” means the period beginning the day after the end of Period A and ending with the end of the period specified in regulation 5(4).

### **Commencement of parental bereavement leave**

7.—(1) An employee’s period of parental bereavement leave begins on the date specified in his or her notice under regulation 6(1) except where—

- (a) he or she has cancelled the week or weeks of parental bereavement leave specified in that notice in accordance with regulation 6(4), or
- (b) paragraph (2) applies.

(2) In a case where—

- (a) the employee notifies his or her employer of the employee’s intention to begin his or her parental bereavement leave on the same day as notice is given to his or her employer in accordance with regulation 6(2), and
- (b) he or she is already at work on that day,

the employee’s period of parental bereavement leave begins on the day after that day.

### **Commencement of other statutory leave**

8.—(1) This regulation applies where an employee’s period of parental bereavement leave has commenced in accordance with regulation 7 and, before that period is due to end, the employee begins another period of statutory leave.

(2) Where paragraph (1) applies, the period of parental bereavement leave ends immediately before the start of the other period of statutory leave and any remaining entitlement to parental bereavement leave—

- (a) may be taken after the end of the other period of statutory leave (but within the period specified in regulation 5(4)), and
- (b) must be taken in a single consecutive period.

(3) Where paragraph (1) applies, and the employee chooses, in accordance with paragraph (2)(a), to take his or her remaining entitlement to parental bereavement leave after the end of the other period of statutory leave, he or she must give a separate notice in respect of that remaining entitlement, in accordance with regulation 6 (other than the requirement under regulation 6(1)(c)).

(4) Where any remaining entitlement to parental bereavement leave includes part of a week as a result of paragraph (2), the portion of the remaining entitlement comprising part of a week will be deemed to be a week for the purposes of the requirements set out in regulation 6(1) to (5).