

2015 No. 98

EMPLOYMENT

WORK AND FAMILIES

**The Shared Parental Leave and Paternity and Adoption Leave
(Adoptions from Overseas) Regulations (Northern Ireland) 2015**

Made - - - - *2nd March 2015*

Coming into operation - *5th April 2015*

Approved by resolution of the Assembly on 12th May 2015

The Department for Employment and Learning makes the following Regulations in exercise of the powers conferred by Articles 70C(2)(a), 107A(1), (2A) and (2B), 107B(3)(a) and (aa), and (3A), 107D(1)(a) and (2)(b), 107G (1) to (6), 107I(1), (4), (7) to (14) and (16), 107J(1), 107K(1), (4) and (5), 107L, 107M(1)(c), 112B(2) and (4A)(d), and 131(e) of the Employment Rights (Northern Ireland) Order 1996(f).

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Shared Parental Leave and Paternity and Adoption Leave (Adoptions from Overseas) Regulations (Northern Ireland) 2015 and come into operation on 5th April 2015.

Interpretation

2. In these Regulations—

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- (a) Article 70C was inserted by the Employment Relations (Northern Ireland) Order 1999 (S.I. 1999/2790 (N.I. 9)), Schedule 4, Part 3, paragraph 3; relevant amendments were made by the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2)), Schedule 2, paragraph 4(6) and the Work and Families Act (Northern Ireland) 2015 (c. 1), Schedule 1, paragraph 4(1) and (5).
- (b) Articles 107A, 107B and 107D were inserted by S.I. 2002/2836 (N.I. 2), Article 3. Articles 107A and 107B were amended by the Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947 (N.I. 16)), Schedule 1, paragraphs 32 and 33 and by 2015 c. 1 (N.I.), section 3(4) and (5). There are other amendments which are not relevant.
- (c) Articles 107G to 107M were inserted by 2015 c. 1 (N.I.), section 2.
- (d) Article 112B was inserted by S.I. 2002/2836 (N.I. 2), Article 4; paragraph (4A) was inserted by 2015 c. 1 (N.I.), section 3(7).
- (e) Article 131 was substituted by S.I. 1999/2790 (N.I. 9), Schedule 4, Part 3, paragraph 8 and amended for relevant purposes by 2015 c. 1 (N.I.), Schedule 1, paragraph 4(16)(b).
- (f) S.I. 1996/1919 (N.I. 16).

“the 1996 Order” means the Employment Rights (Northern Ireland) Order 1996(a);

“the Application Regulations” means the Employment Rights (Northern Ireland) Order 1996 (Application of Articles 107G and 107I to Adoptions from Overseas) Regulations (Northern Ireland) 2015(b);

“adoption from overseas” means the adoption of a child who enters Northern Ireland from outside the United Kingdom in connection with or for the purposes of adoption which does not involve the placement of the child for adoption under the law of any part of the United Kingdom, and references to a child adopted from overseas shall be construed accordingly;

“Curtilment Regulations” means the Maternity and Adoption Leave (Curtilment of Statutory Rights to Leave) Regulations (Northern Ireland) 2015(c);

“enter Northern Ireland” means enter Northern Ireland from outside the United Kingdom in connection with or for the purposes of adoption;

“Leave Regulations” means the Shared Parental Leave Regulations (Northern Ireland) 2015(d);

“PAL (Adoption from Overseas) Regulations” means the Paternity and Adoption Leave (Adoption from Overseas) Regulations (Northern Ireland) 2003(e).

PART 2

Application of the Curtilment Regulations

Application of the Curtilment Regulations to adoptions from overseas

3.—(1) The provisions of the Curtilment Regulations, insofar as they provide for the curtilment of statutory adoption leave, apply to adoptions from overseas, subject to the modifications set out in paragraph (2) and regulations 4 to 6.

(2) Any references in the provisions of the Curtilment Regulations to the provisions in Chapter 1B of Part 9 of the 1996 Order(f) must be construed as references to the provisions of Chapter 1B as modified by the Application Regulations.

Modifications to the Curtilment Regulations

4. The Curtilment Regulations are modified as follows.

5. In regulation 2 (application) for paragraph (2) substitute—

“(2) Part 3 of these Regulations has effect only in relation to children who enter Northern Ireland on or after 5th April 2015.”.

6.—(1) Regulation 3 (interpretation) is modified as follows.

(2) In paragraph (1)—

(a) for the definition of “A” substitute—

““A”, in relation to C, means the person by whom C has been or is to be adopted, or, in a case where two people have adopted C jointly, whichever of them has elected to be the adopter for the purposes of the Paternity and Adoption Leave Regulations (Northern Ireland) 2002(g);”;

(b) for the definition of “AP” substitute—

(a) S.I. 1996/1919 (N.I. 16).

(b) S.R. 2015 No. 97.

(c) S.R. 2015 No. 95.

(d) S.R. 2015 No. 93.

(e) S.R. 2003 No. 222.

(f) Chapter 1B was inserted by the Work and Families Act (Northern Ireland) 2015 (c. 1 (N.I.)), section 2(2).

(g) S.R. 2002 No. 377.

““AP” means the person who at the date on which C enters Northern Ireland is married to, or the civil partner or the partner of, A;” and

(c) after the definition of “declaration of consent and entitlement”, insert—

““enter Northern Ireland” means enter Northern Ireland from outside the United Kingdom in connection with or for the purposes of adoption;”.

PART 3

Application of the Leave Regulations

Application of the Leave Regulations to adoptions from overseas

7.—(1) The provisions of the Leave Regulations mentioned in paragraph (2), insofar as they apply to shared parental leave (adoption), apply to adoptions from overseas, subject to the modifications set out in paragraphs (3) and (4) and regulations 8 to 21.

(2) The relevant provisions are—

(a) regulation 2;

(b) regulation 3;

(c) Parts 3 to 6;

(d) Part 2 of the Schedule.

(3) Any references in the provisions of the Leave Regulations mentioned in paragraph (2) to the provisions in Chapter 1B of Part 9 of the 1996 Order must be construed as references to the provisions of Chapter 1B as modified by the Application Regulations.

(4) Any references in the provisions of the Leave Regulations mentioned in paragraph (2) to other provisions of those Regulations must be construed as references to those provisions as modified by these Regulations.

Modifications to the Leave Regulations for the purposes of adoptions from overseas

8. The Leave Regulations are modified as follows.

9. In regulation 2 (application) for paragraph (2) substitute—

“(2) The provisions relating to shared parental leave in Part 3 have effect only in relation to children who enter Northern Ireland on or after 5th April 2015.”.

10.—(1) Regulation 3 (interpretation) is modified as follows.

(2) In paragraph (1)—

(a) for the definition of “A” substitute—

““A”, in relation to C, means the person by whom C has been or is to be adopted, or, in a case where two people have adopted C jointly, whichever of them has elected to be the adopter for the purposes of the Paternity and Adoption Leave Regulations (Northern Ireland) 2002(a);”;

(b) for the definition of “AP” substitute—

““AP” means the person who at the date on which C enters Northern Ireland is married to, or the civil partner or the partner of, A;” and

(c) insert the following definitions in the appropriate places alphabetically—

““enter Northern Ireland” means enter Northern Ireland from outside the United Kingdom in connection with or for the purposes of adoption;”;

(a) S.R. 2002 No. 377; election is dealt with in regulation 2(4)(c) of those Regulations.

““official notification” means written notification, issued by or on behalf of the relevant central authority, that it is prepared to issue a certificate to the overseas authority concerned with the adoption of C, or that it has issued a certificate and sent it to that authority, confirming, in either case, that A is eligible to adopt, and has been assessed and approved as being a suitable adoptive parent;”;

““relevant central authority” means—

- (a) where the Intercountry Adoption (Hague Convention) Regulations (Northern Ireland) 2003(a) apply to A and A is habitually resident in Northern Ireland, the Department of Health, Social Services and Public Safety; and
- (b) in any other case, the Secretary of State.”.

11.—(1) Regulation 20 (adopter’s entitlement to shared parental leave) is modified as follows.

(2) In paragraphs (2)(b) and (3)(b) for “of the placement for adoption of C” substitute “on which C enters Northern Ireland”.

(3) In paragraph (4) for “placed for adoption through a single placement” substitute “adopted as part of the same arrangement”.

12.—(1) Regulation 21 (adopter’s partner’s entitlement to shared parental leave) is modified as follows.

(2) In paragraphs (2)(b) and (3)(b) for “of the placement for adoption of C” substitute “on which C enters Northern Ireland”.

(3) In paragraph (4) for “placed for adoption through a single placement” substitute “adopted as part of the same arrangement”.

13. In regulation 23 (periods when shared parental leave may be taken), for paragraph (1) substitute—

“(1) Shared parental leave may be taken at any time within the period which begins on the date on which C enters Northern Ireland (or where more than one child is adopted as a result of the same arrangement, the date on which the first child entered Northern Ireland) and ends on the day before the first anniversary of that date.”.

14.—(1) Regulation 24 (adopter’s notice of entitlement) is modified as follows.

(2) For sub-paragraph (c) in paragraph (2) substitute—

“(c) the date that A received the official notification;”.

(3) For sub-paragraph (d) in paragraph (2) substitute—

“(d) the date on which C is expected to enter Northern Ireland (except as provided for in paragraph (5));”.

(4) For paragraph (5) substitute—

“(5) Where a notice is given under paragraph (1) before the date that C enters Northern Ireland and C enters Northern Ireland less than eight weeks before the start of the first period of shared parental leave, A must give the date of C’s entry into Northern Ireland to A’s employer as soon as reasonably practicable and, in any event, before the first period of shared parental leave to be taken by A.”.

15.—(1) Regulation 25 (adopter’s partner’s notice of entitlement) is modified as follows.

(2) For sub-paragraph (c) in paragraph (2) substitute—

“(c) the date that A received the official notification;”.

(3) For sub-paragraph (d) in paragraph (2) substitute—

“(d) the date that C is expected to enter Northern Ireland (except as provided for in paragraph (4));”.

(a) S.R. 2003 No. 16

(4) For paragraph (4) substitute—

“(4) Where a notice is given under paragraph (1) before the date that C enters Northern Ireland, AP must give the date of C’s entry into Northern Ireland to AP’s employer as soon as reasonably practicable after the entry and, in any event, before the first period of shared parental leave to be taken by AP.”.

16.—(1) Regulation 26 (supplementary evidence) is modified as follows.

(2) For sub-paragraph (a) of paragraph (1) substitute—

“(a) a copy of the official notification; and”.

(3) For sub-paragraph (a) of paragraph (2) substitute—

“(a) a copy of the official notification; and”.

17. In regulation 28 (period of leave notice), for sub-paragraph (c) of paragraph (4) substitute—

“(c) if given before C enters Northern Ireland—

(i) contain a start date for the leave which is the day on which C enters Northern Ireland or which is expressed as a number of days following the date of C’s entry into Northern Ireland;

(ii) contain an end date expressed as a number of days following the date of C’s entry into Northern Ireland.”.

18. In regulation 34 (entitlement in the event of disrupted placement or death), for paragraph (b) substitute—

“(b) regulation 17 of the Intercountry Adoption (Hague Convention) Regulations (Northern Ireland) 2003 applies.”.

19. In regulation 35 (continuity of employment test), in sub-paragraph (b) of paragraph (3), for “A was notified of having been matched for adoption with C” substitute “A received the official notification”.

20. In regulation 36 (employment and earnings test), in paragraph (5), for the definition of “calculation week” substitute—

““calculation week” means the week during which C enters Northern Ireland;”.

21.—(1) Paragraph 10 (entitlement in the event of disrupted placement or death) of the Schedule is modified as follows.

(2) For sub-paragraph (1) substitute—

“(1) Where after a notice of entitlement has been given under regulation 24—

(a) C dies; or

(b) regulation 17 of the Intercountry Adoption (Hague Convention) Regulations (Northern Ireland) 2003,

the modifications set out in paragraphs (3), (5) and (6) apply in relation to the entitlement of A to shared parental leave after C dies or either of those regulations apply.”.

(3) For sub-paragraph (2) substitute—

“(2) Where after a notice of entitlement has been given under regulation 25—

(a) C dies; or

(b) regulation 17 of the Intercountry Adoption (Hague Convention) Regulations (Northern Ireland) 2003 applies,

the modifications set out in paragraphs (4) to (6) apply in relation to the entitlement of AP to shared parental leave after C dies or either of those regulations apply.”.

(4) For sub-paragraph (6) substitute—

“(6) In regulation 32, for paragraph (1) substitute—

“(1) After the date on which C dies or regulation 17 of the Intercountry Adoption (Hague Convention) Regulations (Northern Ireland) 2003 applies, only one notice may be given under regulation 31.”.

(5) For sub-paragraph (7) substitute—

“(7) Where more than one child is adopted as a result of the same arrangement, a reference in this paragraph to the death of C or to the application of regulation 17 of the Intercountry Adoption (Hague Convention) Regulations (Northern Ireland) 2003 must be construed as a reference to the last of those children to die or to the last of those children in relation to whom those regulations applied.”.

PART 4

Amendments to the PAL (Adoption from Overseas) Regulations

22. The PAL (Adoption from Overseas) Regulations are amended as follows.

23. In regulation 4 (interpretation), in paragraph (2)—

(a) in sub-paragraph (a), for “and” substitute a semi-colon;

(b) after sub-paragraph (a), insert—

“(ab) for the definition of “child”, substitute—

““child” means a person who enters Northern Ireland from outside the United Kingdom in connection with or for the purposes of adoption which does not involve the placement of the person for adoption under the law of any part of the United Kingdom and who was under the age of 18 at the time of entry into Northern Ireland;”;

(c) in sub-paragraph (b)—

(i) at the end of the definition of “adoption from overseas”, insert a semi-colon;

(ii) at the end of the definition of “enter Northern Ireland”, insert a semi-colon;

(iii) at the end of the definition of “official notification”, insert a semi-colon;

(iv) at the end of the definition of “relevant domestic authority”, for the full stop substitute a semi-colon;

(v) for the definition of “shared parental leave”(a), substitute—

““shared parental leave” means leave under Article 107G of the 1996 Order;”.

24. In regulation 7 (entitlement to paternity leave: adoption from overseas), in substituted regulation 8—

(a) in paragraph (1), for “An” substitute “Subject to paragraph (1A), an”; and

(b) after paragraph (1), insert—

“(1A) An employee is not entitled to be absent from work under paragraph (1) if the employee has taken shared parental leave in respect of the child.”.

25. In regulation 9 (entitlement to ordinary adoption leave: adoption from overseas), in substituted regulation 15—

(a) in paragraph (1), for “An” substitute “Subject to paragraph (1A), an”;

(b) for sub-paragraph (a) in paragraph (1), substitute—

“(a) is the child’s adopter; and”;

(c) after paragraph (1), insert—

(a) Definition previously inserted by S.R. 2015 No. 87.

“(1A) An employee is not entitled to be absent from work under paragraph (1) if the employee has taken shared parental leave in respect of the child.”; and

(d) omit paragraphs (2) and (3).

Sealed with the Official Seal of the Department for Employment and Learning on 2nd March 2015.



Dr Stephen Farry
Minister for Employment and Learning

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision relating to shared parental leave in respect of adoptions from overseas. An adoption from overseas is defined in the Regulations as an adoption of a child who enters Northern Ireland from outside the United Kingdom in connection with or for the purposes of an adoption which does not involve the placement of the child for adoption under the law of any part of the United Kingdom.

Regulation 3 sets out the extent to which the Maternity and Adoption Leave (Curtailment) Regulations (Northern Ireland) 2015 apply to adoptions from overseas and regulations 4 to 7 set out the modifications which apply to those Regulations for the purposes of such adoptions.

Regulation 7 sets out the extent to which the Shared Parental Leave Regulations (Northern Ireland) 2015 apply to adoptions from overseas.

Regulations 8 to 21 set out the modifications which apply to the Shared Parental Leave Regulations (Northern Ireland) 2015 for the purposes of adoptions from overseas. The modifications relate to dates and evidential requirements which are relevant to the entitlement and notification of shared parental leave (adoption).

Regulations 22 to 25 make amendments to the Paternity and Adoption Leave (Adoption from Overseas) Regulations (Northern Ireland) 2003 to mirror the amendments made to the Paternity and Adoption Leave Regulations (Northern Ireland) 2002, in relation to births and adoptions in Northern Ireland, by the Paternity and Adoption Leave (Amendment) Regulations (Northern Ireland) 2015.

An impact assessment has not been prepared for these Regulations. These Regulations are part of a package of legislative measures and the relevant impacts were assessed within the document ‘Sharing parental rights, extending flexibility at work – public consultation’, published in May 2013 (www.delni.gov.uk/index/consultation-zone/archived-consultations/archived-consultations-2013/working-parents-rights.htm), and supplemented by a further publication in April 2014 (www.delni.gov.uk/index/publications/equality-good-relations/shared-parental-leave-and-pay.htm).

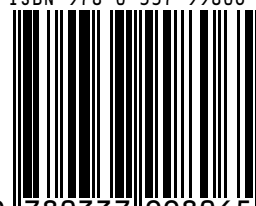
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