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DRAFT STATUTORY INSTRUMENTS

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**1999 No.**

**The Maternity and Parental Leave etc. Regulations 1999**

**PART II**

**MATERNITY LEAVE**

**Entitlement to ordinary maternity leave**

**4.—(1)** An employee is entitled to ordinary maternity leave provided that she satisfies the following conditions—

(a) at least 21 days before the date on which she intends her ordinary maternity leave period to start, or, if that is not reasonably practicable, as soon as is reasonably practicable, she notifies her employer of—

(i) her pregnancy;

(ii) the expected week of childbirth, and

(iii) the date on which she intends her ordinary maternity leave period to start,

and

(b) if requested to do so by her employer, she produces for his inspection a certificate from—

(i) a registered medical practitioner, or

(ii) a registered midwife,

stating the expected week of childbirth.

(2) The notification provided for in paragraph (1)(a)(iii)—

(a) shall be given in writing, if the employer so requests, and

(b) shall not specify a date earlier than the beginning of the eleventh week before the expected week of childbirth.

(3) Where, by virtue of regulation 6(1)(b), an employee's ordinary maternity leave period commences with the first day after the beginning of the sixth week before the expected week of childbirth on which she is absent from work wholly or partly because of pregnancy—

(a) paragraph (1) does not require her to notify her employer of the date specified in that paragraph, but

(b) (whether or not she has notified him of that date) she is not entitled to ordinary maternity leave unless she notifies him as soon as is reasonably practicable that she is absent from work wholly or partly because of pregnancy.

(4) Where, by virtue of regulation 6(2), an employee's ordinary maternity leave period commences with the day on which childbirth occurs—

(a) paragraph (1) does not require her to notify her employer of the date specified in that paragraph, but

- (b) (whether or not she has notified him of that date) she is not entitled to ordinary maternity leave unless she notifies him as soon as is reasonably practicable after the birth that she has given birth.

(5) The notification provided for in paragraphs (3)(b) and (4)(b) shall be given in writing, if the employer so requests.

#### **Entitlement to additional maternity leave**

5. An employee who satisfies the following conditions is entitled to additional maternity leave—

- (a) she is entitled to ordinary maternity leave, and
- (b) she has, at the beginning of the eleventh week before the expected week of childbirth, been continuously employed for a period of not less than a year.

#### **Commencement of maternity leave periods**

6.—(1) Subject to paragraph (2), an employee’s ordinary maternity leave period commences with the earlier of—

- (a) the date which, in accordance with regulation 4(1)(a)(iii), she notifies to her employer as the date on which she intends her ordinary maternity leave period to start, and
- (b) the first day after the beginning of the sixth week before the expected week of childbirth on which she is absent from work wholly or partly because of pregnancy.

(2) Where the employee’s ordinary maternity leave period has not commenced by virtue of paragraph (1) when childbirth occurs, her ordinary maternity leave period commences with the day on which childbirth occurs.

(3) An employee’s additional maternity leave period commences on the day after the last day of her ordinary maternity leave period.

#### **Duration of maternity leave periods**

7.—(1) Subject to paragraphs (2) and (5), an employee’s ordinary maternity leave period continues for the period of eighteen weeks from its commencement, or until the end of the compulsory maternity leave period provided for in regulation 8 if later.

(2) Subject to paragraph (5), where any requirement imposed by or under any relevant statutory provision prohibits the employee from working for any period after the end of the period determined under paragraph (1) by reason of her having recently given birth, her ordinary maternity leave period continues until the end of that later period.

(3) In paragraph (2), “relevant statutory provision” means a provision of—

- (a) an enactment, or
- (b) an instrument under an enactment,

other than a provision for the time being specified in an order under section 66(2) of the 1996 Act.

(4) Subject to paragraph (5), where an employee is entitled to additional maternity leave her additional maternity leave period continues until the end of the period of 29 weeks beginning with the week of childbirth.

(5) Where the employee is dismissed after the commencement of an ordinary or additional maternity leave period but before the time when (apart from this paragraph) that period would end, the period ends at the time of the dismissal.

### **Compulsory maternity leave**

8. The prohibition in section 72 of the 1996 Act, against permitting an employee who satisfies prescribed conditions to work during a particular period (referred to as a “compulsory maternity leave period”), applies—

- (a) in relation to an employee who is entitled to ordinary maternity leave, and
- (b) in respect of the period of two weeks which commences with the day on which childbirth occurs.

### **Exclusion of entitlement to remuneration during ordinary maternity leave**

9. For the purposes of section 71 of the 1996 Act, which includes provision excluding the entitlement of an employee who exercises her right to ordinary maternity leave to the benefit of terms and conditions of employment about remuneration, only sums payable to an employee by way of wages or salary are to be treated as remuneration.

### **Redundancy during maternity leave**

10.—(1) This regulation applies where, during an employee’s ordinary or additional maternity leave period, it is not practicable by reason of redundancy for her employer to continue to employ her under her existing contract of employment.

(2) Where there is a suitable available vacancy, the employee is entitled to be offered (before the end of her employment under her existing contract) alternative employment with her employer or his successor, or an associated employer, under a new contract of employment which complies with paragraph (3) (and takes effect immediately on the ending of her employment under the previous contract).

(3) The new contract of employment must be such that—

- (a) the work to be done under it is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances, and
- (b) its provisions as to the capacity and place in which she is to be employed, and as to the other terms and conditions of her employment, are not substantially less favourable to her than if she had continued to be employed under the previous contract.

### **Requirement to notify intention to return during a maternity leave period**

11.—(1) An employee who intends to return to work earlier than the end of her ordinary maternity leave period or, where she is entitled to additional maternity leave, the end of her additional maternity leave period, shall give to her employer not less than 21 days' notice of the date on which she intends to return.

(2) If an employee attempts to return to work earlier than the end of a maternity leave period without complying with paragraph (1), her employer is entitled to postpone her return to a date such as will secure, subject to paragraph (3), that he has 21 days' notice of her return.

(3) An employer is not entitled under paragraph (2) to postpone an employee’s return to work to a date after the end of the relevant maternity leave period.

(4) If an employee whose return to work has been postponed under paragraph (2) has been notified that she is not to return to work before the date to which her return was postponed, the employer is under no contractual obligation to pay her remuneration until the date to which her return was postponed if she returns to work before that date.

### **Requirement to notify intention to return after additional maternity leave**

**12.**—(1) Where, not earlier than 21 days before the end of her ordinary maternity leave period, an employee who is entitled to additional maternity leave is requested in accordance with paragraph (3) by her employer to notify him in writing of—

(a) the date on which childbirth occurred, and

(b) whether she intends to return to work at the end of her additional maternity leave period, the employee shall give the requested notification within 21 days of receiving the request.

(2) The provisions of regulations 19 and 20, in so far as they protect an employee against detriment or dismissal for the reason that she took additional maternity leave, do not apply in relation to an employee who has failed to notify her employer in accordance with paragraph (1).

(3) A request under paragraph (1) shall be—

(a) made in writing, and

(b) accompanied by a written statement—

(i) explaining how the employee may determine, in accordance with regulation 7(4), the date on which her additional maternity leave period will end, and

(ii) warning of the consequence, under paragraph (2), of failure to respond to the employer's request within 21 days of receiving it.