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DRAFT STATUTORY INSTRUMENTS

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**2010 No.**

**The Additional Paternity Leave Regulations 2010**

**PART 3**

**ADDITIONAL PATERNITY LEAVE (ADOPTION)**

**Entitlement to additional paternity leave (adoption)**

**14.**—(1) An employee (“P”) is entitled to be absent from work for the purpose of caring for a child (“C”) if—

- (a) P satisfies the conditions specified in paragraph (2);
- (b) P has complied with the requirements in regulation 16 and, where applicable, regulation 17; and
- (c) C’s adopter (“A”) satisfies the conditions specified in paragraph (4) and has signed the adopter declaration referred to in regulation 16.

(2) The conditions referred to in paragraph (1)(a) are that P—

- (a) has been continuously employed for a period of not less than 26 weeks ending with the relevant week;
- (b) remains in continuous employment with that employer from the relevant week until the week before the first week of P’s additional paternity leave;
- (c) is either married to or the partner or civil partner of A; and
- (d) has been matched with C for adoption.

(3) The references in paragraph (2) above to the relevant week are to the week, beginning with Sunday, in which P is notified of having been matched with C.

(4) The conditions referred to in paragraph (1)(c) are that A—

- (a) is entitled by reference to the adoption of C to one or both of—
  - (i) adoption leave; or
  - (ii) statutory adoption pay; and
- (b) has, or is treated as having, returned to work under regulation 25.

(5) P’s entitlement to leave under this regulation shall not be affected by the placement for adoption of more than one child as part of the same arrangement.

**Options in respect of leave under regulation 14**

**15.**—(1) P may choose to take leave under regulation 14 at any time within the period which begins 20 weeks after the date of C’s placement for adoption and ends 12 months after this date.

(2) The minimum period of leave which may be taken is two consecutive weeks and the maximum period is 26 weeks.

(3) The leave must be taken in multiples of complete weeks and must be taken as one continuous period.

(4) The leave may not be taken until eight weeks after the date of P's leave notice under regulation 16(1).

(5) This regulation is subject to regulation 24 (disrupted placement or death of a child).

#### **Notice and evidential requirements for leave under regulation 14**

**16.—**(1) P must, not less than eight weeks before the start date chosen by P for the period of leave, give P's employer ("E")—

- (a) a leave notice;
- (b) an employee declaration; and
- (c) an adopter declaration.

(2) In this regulation—

- (a) "a leave notice" means a written notice specifying—
  - (i) the date on which P was notified of having been matched with C;
  - (ii) the date on which C was placed with P;
  - (iii) the dates which P has chosen in accordance with regulation 15 as the start date and end date for the period of leave.
- (b) "an employee declaration" means a written declaration signed by P, stating—
  - (i) that the purpose of the period of leave will be to care for C; and
  - (ii) that P satisfies the conditions in regulation 14(2)(c) and (d).
- (c) "an adopter declaration" means a written declaration by A stating—
  - (i) A's name and address;
  - (ii) the date A intends to return to work (within the meaning of regulation 25);
  - (iii) A's National Insurance number;
  - (iv) that P satisfies the conditions in regulation 14(2)(c); and
  - (v) that A consents to E processing such of A's information as is contained in the declaration.

(3) Where E makes a request within 28 days of receiving P's leave notice, P must, within 28 days of E's request, give E such of the following as E may request—

- (a) evidence, in the form of one or more documents issued by the adoption agency that matched P with C, of—
  - (i) the name and address of the agency;
  - (ii) the date on which P was notified that P had been matched with C;
  - (iii) the date on which the agency expects to place C for adoption with A and P; and
- (b) the name and address of A's employer (or, if A is self-employed, A's business address).

(4) After giving leave notice, P must give E written notice ("withdrawal notice") as soon as reasonably practicable if—

- (a) P no longer satisfies the conditions in regulation 14(2)(c) or (d);
- (b) A no longer satisfies the conditions in regulation 14(4).

(5) E may require P to take a period of leave where—

- (a) P has given E withdrawal notice less than six weeks before the start date specified in P's leave notice, or, where applicable, last varied in accordance with regulation 17, and
  - (b) it is not reasonably practicable for E to accommodate the change in P's arrangements.
- (6) Leave that E may require P to take under paragraph (5)—
- (a) shall be treated as additional paternity leave for the purpose of these Regulations;
  - (b) shall start on the start date specified by P in P's leave notice, or last varied in accordance with regulation 17; and
  - (c) shall end no later than—
    - (i) six weeks after the date on which withdrawal notice was given to E, or
    - (ii) the end date specified in P's leave notice, or, where applicable, last varied in accordance with regulation 17,whichever is the earlier.
- (7) E may require P to remain on leave where—
- (a) P has given E withdrawal notice after P's period of additional paternity leave has begun, and
  - (b) it is not reasonably practicable for E to accommodate the change in P's arrangements.
- (8) The period for which E may require P to remain on leave under paragraph (7)—
- (a) shall end no later than the earlier of—
    - (i) six weeks after the date on which P gave E withdrawal notice, or
    - (ii) the end date specified in P's leave notice or, where applicable, last varied in accordance with regulation 17, and
  - (b) shall be treated as additional paternity leave for the purpose of these Regulations.

#### **Variation or cancellation of leave under regulation 14 before leave period has begun**

**17.—**(1) Before P's leave period has begun, P may cancel P's leave notice, or vary the dates notified as the start and end date for the period of leave, provided that P gives E written notice ("subsequent notice")—

- (a) before the earlier of—
    - (i) six weeks before the date cancelled or varied, or
    - (ii) six weeks before the new date, or,
  - (b) if it is not reasonably practicable for P to give notice in accordance with sub-paragraph (a), as soon as is reasonably practicable.
- (2) Where P has given subsequent notice, but—
- (a) the notice does not comply with paragraph 1(a), and
  - (b) it is not reasonably practicable for E to accommodate the change in P's arrangements,
- E may require that P take a period of additional paternity leave.
- (3) Additional paternity leave which P is required to take under paragraph (2)—
- (a) shall start—
    - (i) on the start date specified by P in the leave notice, or
    - (ii) where applicable, the start date specified in the most recent subsequent notice given by P in compliance with the requirements of paragraph (1)(a); and
  - (b) shall end no later than —

- (i) six weeks after P gave notice under paragraph (1), or
- (ii) the end date specified in the leave notice or, where applicable, the most recent subsequent notice given by P in compliance with the requirements of paragraph (1) (a),

whichever is the earlier.

- (4) In this regulation, “leave notice” has the meaning given by regulation 16(2).

#### **Employer’s confirmation of period of leave under regulation 14**

**18.**—(1) Subject to paragraph (2), where P gives leave notice under regulation 16(1) or subsequent notice under regulation 17(1) to E, E shall, within 28 days of receipt of the notice, confirm the relevant dates to P in writing.

(2) Where E requires P to take leave under regulations 16(5) or 17(2), E shall notify P of the dates of that leave as soon as reasonably practicable, and at any event before the start of the leave that P is required to take under regulations 16(5) or 17(2).

#### **Commencement of leave under regulation 14**

**19.** Save where regulations 16(5) and 17(2) apply, P’s period of additional paternity leave under regulation 14 begins—

- (a) on the start date notified in P’s leave notice under regulation 16(1), or,
- (b) where applicable, the date specified in P’s most recent subsequent notice under regulation 17(1).

#### **Entitlement to additional paternity leave (adoption) in the event of the death of the adopter**

**20.**—(1) In a case where A has died before the end of the period of 12 months beginning with C’s placement for adoption, the provisions in regulations 14 to 19 shall apply with the following modifications.

- (2) In regulation 14 (entitlement to additional paternity leave (adoption))—
  - (a) paragraph (1)(b) shall apply as if the references in that paragraph—
    - (i) to regulation are 16 references to regulation 22;
    - (ii) to regulation 17 are references to regulation 23;
  - (b) paragraph (1)(c) shall read—
    - (i) “(c) C’s adopter (“A”) satisfied, before A’s death, one or more of the conditions specified in paragraph (4)(a) (or would have satisfied such conditions but for the fact that A has died).”
  - (c) the condition in paragraph (2)(c) shall be taken to be satisfied if it would have been satisfied but for the fact that A has died; and
  - (d) the requirement in paragraph (4)(b) shall be omitted.
- (3) Regulation 15 (options in respect of leave) shall be replaced by regulation 21.
- (4) Regulation 16 (notice and evidential requirements for leave) shall be replaced by regulation 22.
- (5) Regulation 17 (variation or cancellation of leave) shall be replaced by regulation 23.
- (6) Regulations 18 (employer’s confirmation) and 19 (commencement of leave) apply as if the references in those regulations—
  - (a) to regulation 16(1) are references to regulation 22(1);

- (b) to regulation 16(5) are references to regulation 22(7);
- (c) to regulation 17(1) are references to regulation 23(2); and
- (d) to regulation 17(2) are references to regulation 23(3).

### **Options in respect of leave under regulation 14 where the adopter has died**

**21.**—(1) P may take leave under regulation 14, as modified by regulation 20, at any time within the period beginning with the date of A’s death and ending 12 months after the date of C’s placement for adoption.

(2) The minimum period of leave which may be taken is two consecutive weeks and the maximum period is 52 weeks.

(3) The leave must be taken as one continuous period and must be taken in multiples of complete weeks.

(4) P shall not be entitled to leave in accordance with regulation 14, as modified by regulation 20, if P has already taken a period of additional paternity leave in respect of C which has ended before the date of A’s death.

(5) If P is on leave under regulation 14 on the date of M’s death, P shall be entitled to extend the leave to include a further period of leave in accordance with regulation 14, as modified by regulation 20, provided—

- (a) P satisfies the conditions for eligibility set out in regulation 14 as so modified;
  - (b) that further period of leave immediately follows the first, together with which it forms one continuous period of additional paternity leave;
  - (c) the total period of additional paternity leave taken does not exceed 52 weeks; and
  - (d) the entire period of additional paternity leave is taken within the period of 12 months after the date of C’s placement for adoption.
- (6) This regulation is subject to regulation 24 (disrupted placement or death of a child).

### **Notice and evidential requirements for leave under regulation 14 in the event of the death of the adopter**

**22.**—(1) As soon as reasonably practicable after the date of A’s death, and in any event, on or before the relevant date, P must give P’s employer (“E”), in writing—

- (a) a leave notice; and
  - (b) an employee declaration.
- (2) In this regulation—
- (a) “a leave notice” means a written notice specifying—
    - (i) the date on which P was notified of having been matched with C;
    - (ii) the date on which C was placed with P;
    - (iii) the dates P has chosen in accordance with regulation 21 as the start date and end date for the period of leave.
  - (b) “an employee declaration” means a written declaration signed by P, stating—
    - (i) that the purpose of the period of leave will be to care for C;
    - (ii) that P satisfies the conditions in regulation 14(2)(c) and (d), as modified by regulation 20;
    - (iii) A’s name and last address;

- (iv) the date of A's death; and
  - (v) A's National Insurance number.
- (c) "the relevant date" is eight weeks after the date of A's death.
- (3) Where E makes a request within 28 days of receiving P's leave notice, P must, within 28 days of E's request, give E such of the following as E may request—
- (a) evidence, in the form of one or more documents issued by the adoption agency that matched P with C, of—
    - (i) the name and address of the agency;
    - (ii) the date on which P was notified of having been matched with C;
    - (iii) the date on which the agency expects to place C for adoption with A and P; and
  - (b) the name and address of A's last employer (or, if A was self-employed, A's business address).
- (4) If P takes leave before the relevant date, P shall be taken to have complied with the requirements of paragraph (1), if P as soon as reasonably practicable, informs E of A's death and, before the relevant date, gives leave notice and the employee declaration.
- (5) Notwithstanding paragraph (1), P may give E leave notice and the employee declaration after the relevant date, provided that P gives E written notice at least six weeks before the start date chosen by P for the period of leave.
- (6) If P, after giving leave notice, no longer satisfies the conditions in regulation 14(2)(c) or (d) as modified by regulation 20, P must give E written notice ("withdrawal notice") as soon as reasonably practicable.
- (7) E may require that P take a period of leave where—
- (a) P has given E withdrawal notice—
    - (i) less than six weeks before the start date specified in P's leave notice, or, where applicable, last varied in accordance with regulation 23, and
    - (ii) after the relevant date, and
  - (b) it is not reasonably practicable for E to accommodate the change in P's arrangements.
- (8) Leave that E may require P to take under paragraph (7)—
- (a) shall be treated as additional paternity leave for the purpose of these Regulations;
  - (b) shall start on the start date specified in P's leave notice, or, where applicable, last varied in accordance with regulation 23; and
  - (c) shall end no later than—
    - (i) six weeks after the date on which withdrawal notice was given to E, or
    - (ii) the end date specified in P's leave notice, or, where applicable, last varied in accordance with regulation 23,
 whichever is the earlier.
- (9) E may require P to remain on leave where—
- (a) P has given E withdrawal notice—
    - (i) after P's period of additional paternity leave has begun, and
    - (ii) after the relevant date, and
  - (b) it is not reasonably practicable for E to accommodate the change in P's arrangements.
- (10) The period for which E may require P to remain on leave under regulation (9)—

- (a) shall end no later than the earlier of—
  - (i) six weeks after the date on which P gave E withdrawal notice, or
  - (ii) the end date specified in P’s leave notice, or, where applicable, last varied in accordance with regulation 23; and
- (b) shall be treated as additional paternity leave for the purpose of these Regulations.

**Variation or cancellation of leave under regulation 14 in the event of the death of the adopter**

**23.**—(1) Notwithstanding regulation 19 as modified by regulation 20, P may, on or before the relevant date, cancel P’s leave notice, or vary the dates notified as the start and end dates for the period of leave, by notifying E in writing on or before any date that is varied or cancelled.

(2) After the relevant date, but before P’s leave period has begun, P may cancel P’s leave notice, or vary the dates notified as the start and end date for the period of leave, provided that P gives E written notice (“subsequent notice”)—

- (a) before the earlier of—
    - (i) six weeks before the date cancelled or varied, or
    - (ii) six weeks before the new date, or,
  - (b) if is not reasonably practicable for P to give notice in accordance with sub-paragraph (a), as soon as is reasonably practicable.
- (3) Where P has given subsequent notice, but—
- (a) the notice does not comply with paragraph 2(a), and
  - (b) it is not reasonably practicable for E to accommodate the change in P’s arrangements,
- E may require that P take a period of additional paternity leave.

(4) Additional paternity leave which P is required to take under paragraph (3)—

- (a) shall start—
  - (i) on the start date specified by P in the leave notice, or
  - (ii) where applicable, the start date specified in the most recent subsequent notice given by P in compliance with the requirements of paragraphs (1) or (2)(a); and
- (b) shall end no later than—
  - (i) six weeks after P gave notice under paragraph (2), or
  - (ii) the end date specified in the leave notice or, where applicable, the most recent subsequent notice given by P in compliance with the requirements of paragraphs (1) or (2)(a),

whichever is the earlier.

(5) In this regulation, the terms “relevant date” and “leave notice” have the meanings given by regulation 22(2).