

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 Employment Rights Act 1996 (Application
of Sections 75A, 75B, 75G, 75H, 80A and 80B
to Parental Order Cases) Regulations 2014

Made - - - - *****
Coming into force - - *25th November 2014*

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

The Secretary of State, in exercise of the powers conferred by sections 75A(8), 75B(9), 75H(18), 80B(9) and 236(5) of the Employment Rights Act 1996(2), makes the following Regulations.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Employment Rights Act 1996 (Application of Sections 75A, 75B, 75G, 75H, 80A and 80B to Parental Order Cases) Regulations 2014 and come into force on 25th November 2014.

(2) In these Regulations—

“the Act” means the Employment Rights Act 1996;

“intended parent”, in relation to a child, means a person who, on the day of the child’s birth—

- (a) applies, or intends to apply during the period of 6 months beginning with that day, with another person for a parental order in respect of the child, and
- (b) expects the court to make a parental order on that application in respect of the child;

(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) Section 75A was inserted by the Employment Act 2002 (c. 22), section 3, and amended by the Work and Families Act 2006 (c. 18), Schedule 1, paragraph 33, and the Children and Families Act 2014, sections 118(4), 121(1), and 122(1). Section 75B was inserted by the Employment Act 2002, section 3, and amended by the Work and Families Act 2006, Schedule 1, paragraph 34, and the Children and Families Act 2014, sections 118(5), 121(2), and 122(2). Section 75H was inserted by the Children and Families Act 2014, section 117. Section 80B was inserted by the Employment Act 2002, section 1, and amended by the Children and Families Act 2014, sections 118(7) and 122(4).

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The Employment Rights Act 1996 (Application of Sections 75A, 75B, 75G, 75H, 80A and 80B to Parental Order Cases) Regulations 2014 No. 3095

“parental order” means an order under section 54(1) of the Human Fertilisation and Embryology Act 2008; and

“parental order parent” means a person—

- (a) on whose application the court has made a parental order in respect of a child, or
- (b) who is an intended parent of a child.

Application of sections 75A and 75B of the Act to parental order parents

- 2. Sections 75A and 75B of the Act have effect in relation to parental order parents.

Application of sections 75G and 75H of the Act to parental order parents

- 3. Sections 75G and 75H of the Act⁽³⁾ have effect in relation to parental order parents with the modifications specified in the second column of Schedule 1 to these Regulations.

Application of sections 80A and 80B of the Act to parental order parents

- 4. Sections 80A⁽⁴⁾ and 80B of the Act have effect in relation to parental order parents with the modifications specified in the second column of Schedule 2 to these Regulations.

Date

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

⁽³⁾ Section 75G was inserted by the Children and Families Act 2014, section 117.

⁽⁴⁾ Section 80A was inserted by the Employment Act 2002, section 1.

SCHEDULE 1

Regulation 3

<i>Provision</i>	<i>Modification</i>
Section 75G	<p>For paragraph (b) of subsection (1) substitute—</p> <p>“(b) as to being a person—</p> <p>(i) on whose application the court has made a parental order in respect of a child, or</p> <p>(ii) who is an intended parent of a child.”.</p> <p>For paragraph (b) of subsection (4) substitute—</p> <p>“(b) as to being a person—</p> <p>(i) on whose application the court has made a parental order in respect of a child, or</p> <p>(ii) who is an intended parent of a child,</p> <p>(ba) as to relationship with the other person (“A”) on whose application the parental order was made or who is an intended parent of the child.”.</p> <p>After subsection (6) insert—</p> <p>“(6A) In this section and section 75H—</p> <p>“intended parent”, in relation to a child, means a person who, on the day of the child’s birth—</p> <p>(a) applies, or intends to apply during the period of 6 months beginning with that day, with another person for a parental order in respect of the child, and</p> <p>(b) expects the court to make a parental order on that application in respect of the child; and</p> <p>“parental order” means an order under section 54(1) of the Human Fertilisation and Embryology Act 2008.”.</p> <p>Omit subsection (7).</p> <p>Omit subsection (8).</p>
Section 75H	<p>In paragraph (a) of subsection (2), for “with whom the child is, or is expected to be placed for adoption” substitute “on whose application the court has made a parental order in respect of the child or who is an intended parent of the child”.</p> <p>In paragraph (b) of subsection (2), for “with whom the child is, or is expected to be placed for adoption” substitute “on whose application the</p>

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<i>Provision</i>	<i>Modification</i>
	<p>court has made a parental order in respect of the child or who is an intended parent of the child”.</p> <p>In paragraph (b) of subsection (14), for “placed for adoption as part of the same arrangement” substitute “born as a result of the same pregnancy”.</p>

SCHEDULE 2

Regulation 4

<i>Provision</i>	<i>Modification</i>
Section 80A	<p>After paragraph (a) in subsection (5) insert—</p> <p>“(aa) make provision excluding the right to be absent on leave under this section in the case of an employee who satisfies—</p> <ul style="list-style-type: none"> (i) the conditions specified in regulations under section 75A(1) or 80B(1), or (ii) such of those conditions as are specified in regulations under subsection (1);”.
Section 80B	<p>For paragraph (b) of subsection (1) (and the following “and”) substitute—</p> <p>“(b) as to being a person—</p> <ul style="list-style-type: none"> (i) on whose application the court has made a parental order in respect of a child, or (ii) who is an intended parent of a child, and”. <p>For paragraph (c) of subsection (1) substitute—</p> <p>“(c) as to relationship with the other person on whose application the parental order was made or who is an intended parent of the child,”.</p> <p>In subsection (4), for “placement for adoption” substitute “birth”.</p> <p>In paragraph (a) of subsection (5), for “a person with whom a child is placed for adoption” substitute “the other person on whose application the court has made a parental order in respect of a child or who is an intended parent of a child”.</p>

<i>Provision</i>	<i>Modification</i>
	Omit paragraph (aa) of subsection (5)(5).
	In paragraph (c) of subsection (5), for “placed for adoption as part of the same arrangement” substitute “born as a result of the same pregnancy”.
	For subsection (6) substitute— “(6) Where more than one child is born as a result of the same pregnancy, the reference in subsection (4) to the date of the child’s birth shall be read as a reference to the date of birth of the first child born as a result of the pregnancy.”.
	Omit subsection (6A)(6).
	Omit subsection (6B)(7).
	After subsection (7) insert— “(7A) In this section— “intended parent”, in relation to a child, means a person who, on the day of the child’s birth— (a) applies, or intends to apply during the period of 6 months beginning with that day, with another person for a parental order in respect of the child, and (b) expects the court to make a parental order on that application in respect of the child; and “parental order” means an order under section 54(1) of the Human Fertilisation and Embryology Act 2008.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Sections 75A and 75B of the Employment Rights Act 1996 give employees who are adopting a child under the law of any part of the United Kingdom and who satisfy prescribed conditions the right to take ordinary adoption leave and additional adoption leave. These sections also allow an employee who is entitled to ordinary or additional adoption leave to curtail that leave to access shared parental leave. These Regulations provide that those sections have effect in relation to parental order parents.

(5) Section 80B(5)(aa) was inserted by the Children and Families Act 2014, section 121(2)(a).

(6) Section 80B(6A) was inserted by the Children and Families Act 2014, section 121(2)(b).

(7) Section 80B(6B) was inserted by the Children and Families Act 2014, section 121(2)(b).

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A parental order parent is a person who has applied, or intends to apply, with another person, under section 54 of the Human Fertilisation and Embryology Act 2008 for a parental order in respect of a child or someone who has such an order.

Sections 75G and 75H of the Employment Rights Act 1996 contain powers under which the Secretary of State may make regulations entitling an employee who is adopting a child under the law of any part of the United Kingdom, or has a specified relationship with such an adopter, to shared parental leave. These Regulations make the necessary modifications to sections 75G and 75H to provide for those sections to have effect in relation to parental order parents.

Section 80B of the Employment Rights Act 1996 contains powers under which the Secretary of State may make regulations entitling an employee who satisfies specified conditions to paternity leave. These Regulations make the necessary modifications to section 80B to provide for that section to have effect in relation to parental order parents. In addition, these Regulations modify section 80A of the Employment Rights Act 1996 to allow the Secretary of State to make regulations which provide that an employee does not have an entitlement to paternity leave under that section where the employee has the right to paternity leave under section 80B or to adoption leave under section 75A of the Employment Rights Act 1996.

An 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.