STATUTORY INSTRUMENTS

2002 No. 2788

The Paternity and Adoption Leave Regulations 2002

PART 2

PATERNITY LEAVE

Entitlement to paternity leave: birth

- **4.**—(1) [F1Subject to paragraph (1A), an] employee is entitled to be absent from work for the purpose of caring for a child or supporting the child's mother if he—
 - (a) satisfies the conditions specified in paragraph (2), and
 - (b) has complied with the notice requirements in regulation 6 and, where applicable, the evidential requirements in that regulation.
- [F2(1A) An employee is not entitled to be absent from work under paragraph (1) if the employee has taken any shared parental leave in respect of the child.]
 - (2) The conditions referred to in paragraph (1) are that the employee—
 - (a) has been continuously employed for a period of not less than 26 weeks ending with the week immediately preceding the 14th week before the expected week of the child's birth;
 - (b) is either—
 - (i) the father of the child or;
 - (ii) married to [F3, the civil partner] or the partner of the child's mother, but not the child's father;
 - (c) has, or expects to have—
 - (i) if he is the child's father, responsibility for the upbringing of the child;
 - (ii) if he is the mother's husband [^{F4}, civil partner] or partner but not the child's father, the main responsibility (apart from any responsibility of the mother) for the upbringing of the child.
- (3) An employee shall be treated as having satisfied the condition in paragraph (2)(a) on the date of the child's birth notwithstanding the fact that he has not then been continuously employed for a period of not less than 26 weeks, where—
 - (a) the date on which the child is born is earlier than the 14th week before the week in which its birth is expected, and
 - (b) the employee would have been continuously employed for such a period if his employment had continued until that 14th week.
- (4) An employee shall be treated as having satisfied the condition in paragraph (2)(b)(ii) if he would have satisfied it but for the fact that the child's mother has died.
- (5) An employee shall be treated as having satisfied the condition in paragraph (2)(c) if he would have satisfied it but for the fact that the child was stillborn after 24 weeks of pregnancy or has died.

(6) An employee's entitlement to leave under this regulation shall not be affected by the birth, or expected birth, of more than one child as a result of the same pregnancy.

Textual Amendments

- F1 Words in reg. 4(1) substituted (1.12.2014) by The Paternity and Adoption Leave (Amendment) Regulations 2014 (S.I. 2014/2112), regs. 1(3), 4(a)
- F2 Reg. 4(1A) inserted (1.12.2014) by The Paternity and Adoption Leave (Amendment) Regulations 2014 (S.I. 2014/2112), regs. 1(3), 4(b)
- Words in reg. 4(2)(b)(ii) inserted (5.12.2005) by The Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order 2005 (S.I. 2005/2114), art. 2(17), reg. 1, Sch. 17 para. 1(2)(a)
- F4 Words in reg. 4(2)(c)(ii) inserted (5.12.2005) by The Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order 2005 (S.I. 2005/2114), art. 2(17), reg. 1, Sch. 17 para. 1(2)(b)

Commencement Information

II Reg. 4 in force at 8.12.2002, see reg. 1

Options in respect of leave under regulation 4

- 5.—[F5(1) An employee may choose to take either—
 - (a) a single period of leave of either one week or two weeks, or
- (b) two non-consecutive periods of leave of a week each in respect of a child under regulation 4.1
- (2) The leave may only be taken during the period which begins with the date on which the child is born and ends—
 - (a) except in the case referred to in sub-paragraph (b), [F652 weeks] after that date;
 - (b) in a case where the child is born before the first day of the expected week of its birth, [F652 weeks] after that day.
- (3) Subject to paragraph (2) and, where applicable, paragraph (4), an employee may choose to begin his period of leave on—
 - (a) the date on which the child is born;
 - (b) the date falling such number of days after the date on which the child is born as the employee may specify in a notice under regulation 6, or
 - (c) a predetermined date, specified in a notice under that regulation, which is later than the first day of the expected week of the child's birth.
- (4) In a case where the leave is in respect of a child whose expected week of birth begins before 6th April 2003, an employee may choose to begin a period of leave only on a predetermined date, specified in a notice under regulation 6, which is at least 28 days after the date on which that notice is given.

Textual Amendments

- F5 Reg. 5(1) substituted (8.3.2024 with effect from 6.4.2024 in accordance with reg. 5 of the amending S.I.) by The Paternity Leave (Amendment) Regulations 2024 (S.I. 2024/329), regs. 2, **9(a)** (with reg. 6)
- **F6** Words in reg. 5(2) substituted (8.3.2024 with effect from 6.4.2024 in accordance with reg. 5 of the amending S.I.) by The Paternity Leave (Amendment) Regulations 2024 (S.I. 2024/329), regs. 2, **9(b)** (with reg. 6)

Commencement Information

I2 Reg. 5 in force at 8.12.2002, see reg. 1

Notice and evidential requirements for leave under regulation 4

- [F76.—(1) An employee must give their employer—
 - (a) notice of their entitlement to take leave in respect of a child under regulation 4 which specifies the expected week of the child's birth, and
 - (b) a declaration in writing that the employee satisfies the conditions in regulation 4(2)(b) and (c).
- (2) The employee must also give their employer, on each occasion that a period of leave is chosen in accordance with regulation 5—
 - (a) a notice that specifies the start day or date of the period of leave and its duration, and
 - (b) a declaration in writing that the purpose of that period of leave will be that specified in regulation 4(1).
- (3) The notice and declaration in paragraph (1) must be given in or before the 15th week before the expected week of the child's birth or, if it is not reasonably practicable to do so, as soon as is reasonably practicable.
 - (4) The notice and declaration in paragraph (2) must be given at least 28 days before—
 - (a) the first day of the expected week of the child's birth, where the option in regulation 5(3) (a) is chosen;
 - (b) the date falling the specified number of days after the first day of the expected week of the child's birth, where the option in regulation 5(3)(b) is chosen;
- (c) the predetermined date, where the option in regulation 5(3)(c) is chosen; or, if it is not reasonably practicable to do so, as soon as is reasonably practicable.
- (5) An employee who has previously given notice under paragraph (2)(a) or (8) or this paragraph may—
 - (a) vary the day or date chosen as the day or date on which a period of leave will begin or end, or
 - (b) cancel the period of leave chosen,

provided that notice of the variation or cancellation is given to the employer in accordance with paragraph (6).

- (6) A notice under paragraph (5) must be given by whichever is the earlier of at least 28 days before—
 - (a) the original day or date referred to in paragraph (7)(a), or
 - (b) the new day or date referred to in paragraph (7)(b),
- or, if it is not reasonably practicable to do so, as soon as is reasonably practicable.
 - (7) For the purposes of—
 - (a) paragraph (6)(a), where a notice has previously been given under paragraph (2)(a), (5) or (8), the original day or date is—
 - (i) the first day of the expected week of the child's birth, where the option in regulation 5(3)(a) was chosen in that notice;
 - (ii) the specified number of days after the first day of the expected week of the child's birth, where the option in regulation 5(3)(b) was chosen in that notice;

- (iii) the predetermined date specified in that notice, where the option in regulation 5(3) (c) was chosen;
- (b) paragraph (6)(b), the new day or date is—
 - (i) the first day of the expected week of the child's birth, where the option in regulation 5(3)(a) is chosen in the notice of variation;
 - (ii) the date falling the specified number of days after the first day of the expected week of the child's birth, where the option in regulation 5(3)(b) is chosen in the notice of variation;
 - (iii) the predetermined date specified in the notice of variation, where the option in regulation 5(3)(c) is chosen.
- (8) In a case where—
 - (a) the employee has chosen to begin a period of leave on a particular predetermined date, and
 - (b) the child is not born on or before that date,

the employee must vary the choice of date by substituting a later predetermined date, or exercising an alternative option under regulation 5(3), and must give the employer notice of the variation as soon as is reasonably practicable.

- (9) Where a notice is given under paragraph (5) or (8) which varies the days or dates of a period of leave, a declaration under paragraph (2)(b) in relation to that period must be given at the same time as that notice.
- (10) An employee must give their employer a further notice, as soon as is reasonably practicable after the child's birth, of the date on which the child was born.
- (11) Notice under paragraphs (1)(a), (2)(a), (5), (8) or (10) must be given in writing, if the employer so requests.]

Textual Amendments

F7 Reg. 6 substituted (8.3.2024 with effect from 6.4.2024 in accordance with reg. 5 of the amending S.I.) by The Paternity Leave (Amendment) Regulations 2024 (S.I. 2024/329), regs. 2, 10 (with reg. 6)

Commencement Information

I3 Reg. 6 in force at 8.12.2002, see **reg. 1**

Commencement of leave under regulation 4

- 7.—[F8(1) Except in the case referred to in paragraph (2), a period of paternity leave under regulation 4 begins and ends—
 - (a) on the days or dates specified in a notice under regulation 6(2)(a), or
 - (b) where the employee has given a notice of variation under regulation 6(5) or (8), on the days or dates specified in that notice (or the last such notice if the employee has varied the choice more than once).]
 - (2) In a case where—
 - (a) the employee has chosen to begin his period of leave on the date on which the child is born, and
 - (b) he is at work on that date,

the employee's period of leave begins on the day after that date.

Textual Amendments

F8 Reg. 7(1) substituted (8.3.2024 with effect from 6.4.2024 in accordance with reg. 5 of the amending S.I.) by The Paternity Leave (Amendment) Regulations 2024 (S.I. 2024/329), regs. 2, 11 (with reg. 6)

Commencement Information

I4 Reg. 7 in force at 8.12.2002, see reg. 1

Entitlement to paternity leave: adoption

- **8.**—(1) [F9Subject to paragraph (1A), an] employee is entitled to be absent from work for the purpose of caring for a child or supporting the child's adopter if he—
 - (a) satisfies the conditions specified in paragraph (2), and
 - (b) has complied with the notice requirements in regulation 10 and, where applicable, the evidential requirements in that regulation.

[F10(1A) An employee is not entitled to be absent from work under paragraph (1) if the employee—

- (a) has taken any shared parental leave in respect of the child; F11...
- (b) has exercised a right to take time off under section 57ZJ of the 1996 Act in respect of the child [F12]; or
- (c) has already taken paternity leave in relation to the child as a result of the child being placed with a prospective adopter who is at the time of the placement the employee's spouse, civil partner or partner.]]
- (2) The conditions referred to in paragraph (1) are that the employee—
 - (a) has been continuously employed for a period of not less than 26 weeks ending with the week in which the child's adopter is notified of having been matched with the child;
 - (b) is either married to [F13, the civil partner] or the partner of the child's adopter, and
 - (c) has, or expects to have, the main responsibility (apart from the responsibility of the adopter) for the upbringing of the child.
- (3) In paragraph (2)(a), "week" means the period of seven days beginning with Sunday.
- (4) An employee shall be treated as having satisfied the condition in paragraph (2)(b) if he would have satisfied it but for the fact that the child's adopter died during the child's placement.
- (5) An employee shall be treated as having satisfied the condition in paragraph (2)(c) if he would have satisfied it but for the fact that the child's placement with the adopter has ended.
- (6) An employee'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.

Textual Amendments

- **F9** Words in reg. 8(1) substituted (1.12.2014) by The Paternity and Adoption Leave (Amendment) Regulations 2014 (S.I. 2014/2112), regs. 1(3), **5(a)**
- F10 Reg. 8(1A) inserted (1.12.2014 for specified purposes, 5.4.2015 in so far as not already in force) by The Paternity and Adoption Leave (Amendment) Regulations 2014 (S.I. 2014/2112), regs. 1(3)(4), 5(b)
- F11 Word in reg. 8(1A) omitted (5.4.2015) by virtue of The Paternity and Adoption Leave (Amendment) (No. 2) Regulations 2014 (S.I. 2014/3206), regs. 1, 5(2)(a) (with reg. 2)

- F12 Reg. 8(1A)(c) and preceding word inserted (5.4.2015) by The Paternity and Adoption Leave (Amendment) (No. 2) Regulations 2014 (S.I. 2014/3206), regs. 1, 5(2)(b) (with reg. 2)
- **F13** Words in reg. 8(2)(b) inserted (5.12.2005) by The Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order 2005 (S.I. 2005/2114), art. 2(17), reg. 1, **Sch. 17 para. 1(3)**

Commencement Information

I5 Reg. 8 in force at 8.12.2002, see reg. 1

Options in respect of leave under regulation 8

- 9.—[F14(1) An employee may choose to take either—
 - (a) a single period of leave of either one week or two weeks, or
 - (b) two non-consecutive periods of leave of a week each,

in respect of a child under regulation 8.]

- (2) The leave may only be taken during the period of [F1552 weeks] beginning with the date on which the child is placed with the adopter.
- (3) Subject to paragraph (2) and, where applicable, paragraph (4), an employee may choose to begin a period of leave under regulation 8 on—
 - (a) the date on which the child is placed with the adopter;
 - (b) the date falling such number of days after the date on which the child is placed with the adopter as the employee may specify in a notice under regulation 10, or
 - (c) a predetermined date, specified in a notice under that regulation, which is later than the date on which the child is expected to be placed with the adopter.
- (4) In a case where the adopter was notified of having been matched with the child before 6th April 2003, the employee may choose to begin a period of leave only on a predetermined date, specified in a notice under regulation 10, which is at least 28 days after the date on which that notice is given.

Textual Amendments

- F14 Reg. 9(1) substituted (8.3.2024 with effect from 6.4.2024 in accordance with reg. 5 of the amending S.I.) by The Paternity Leave (Amendment) Regulations 2024 (S.I. 2024/329), regs. 2, 12(a) (with reg. 6)
- F15 Words in reg. 9(2) substituted (8.3.2024 with effect from 6.4.2024 in accordance with reg. 5 of the amending S.I.) by The Paternity Leave (Amendment) Regulations 2024 (S.I. 2024/329), regs. 2, 12(b) (with reg. 6)

Commencement Information

I6 Reg. 9 in force at 8.12.2002, see **reg. 1**

Notice and evidential requirements for leave under regulation 8

[F1610.—(1) An employee must give their employer—

- (a) notice of their entitlement to take leave in respect of a child under regulation 8 which specifies—
 - (i) the date on which the adopter was notified of having been matched with the child, and
 - (ii) the date on which the child is expected to be placed with the adopter or, where the child has already been placed for adoption, the date of placement, and

- (b) a declaration in writing that the employee satisfies the conditions in regulation 8(2)(b) and (c).
- (2) The employee must also give their employer, on each occasion that a period of leave is chosen in accordance with regulation 9—
 - (a) a notice that specifies the start day or date of the period of leave and its duration, and
 - (b) a declaration in writing that the purpose of the period of leave will be that specified in regulation 8(1).
- (3) The notices and declarations in paragraphs (1) and (2) must be given no more than seven days after the date on which the adopter is notified of having been matched with the child or, if it is not reasonably practicable to do so, as soon as is reasonably practicable.
- (4) An employee who has previously given notice under paragraph (2)(a) or (7) or this paragraph may—
 - (a) vary the day or date chosen as the day or date on which a period of leave will begin or end, or
- (b) cancel the period of leave chosen, provided that notice of the variation or cancellation is given to the employer in accordance with paragraph (5).
- (5) A notice under paragraph (4) must be given by whichever is the earlier of at least 28 days before—
 - (a) the original day or date referred to in paragraph (6)(a), or
 - (b) the new day or date referred to in paragraph (6)(b),
- or, if it is not reasonably practicable to do so, as soon as is reasonably practicable.
 - (6) For the purposes of—
 - (a) paragraph (5)(a), where a notice has previously been given under paragraph (2)(a), (4) or (7), the original day or date is—
 - (i) the date provided under paragraph (1)(a)(ii) as the date on which the child is expected to be placed with the adopter, where the option in regulation 9(3)(a) was chosen in that notice;
 - (ii) the date falling the specified number of days after the date provided under paragraph (1)(a)(ii) as the date on which the child is expected to be placed with the adopter, where the option in regulation 9(3)(b) was chosen in that notice;
 - (iii) the predetermined date specified in that notice, where the option in regulation 9(3) (c) was chosen;
 - (b) paragraph (5)(b), the new day or date is—
 - (i) the date provided under paragraph (1)(a)(ii) as the date on which the child is expected to be placed with the adopter, where the option in regulation 9(3)(a) is chosen in the notice of variation;
 - (ii) the date falling the specified number of days after the date provided under paragraph (1)(a)(ii) as the date on which the child is expected to be placed with the adopter, where the option in regulation 9(3)(b) chosen in the notice of variation;
 - (iii) the predetermined date specified in the notice of variation, where the option in regulation 9(3)(c) is chosen.
 - (7) In a case where—
 - (a) the employee has chosen to begin a period of leave on a particular predetermined date, and
 - (b) the child is not placed with the adopter on or before that date,

the employee must vary the choice of date by substituting a later predetermined date or exercising an alternative option under regulation 9(3) and must give the employer notice of the variation as soon as is reasonably practicable.

- (8) Where a notice is given under paragraph (4) or (7) which varies the days or dates of a period of leave, a declaration under paragraph (2)(b) in relation to that period must be given at the same time as that notice.
- (9) An employee must give their employer a further notice, as soon as is reasonably practicable after the child's placement, of the date on which the child was placed, unless that information has already been provided under paragraph (1)(a)(ii).
- (10) Notice under paragraphs (1)(a), (2)(a), (4), (7) or (9) must be given in writing, if the employer so requests.]

Textual Amendments

F16 Reg. 10 substituted (8.3.2024 with effect from 6.4.2024 in accordance with reg. 5 of the amending S.I.) by The Paternity Leave (Amendment) Regulations 2024 (S.I. 2024/329), regs. 2, 13 (with reg. 6)

Commencement Information

I7 Reg. 10 in force at 8.12.2002, see reg. 1

Commencement of leave under regulation 8

- 11.—[F17(1) Except in the case referred to in paragraph (2), a period of paternity leave under regulation 8 begins and ends—
 - (a) on the days or dates specified in a notice given under regulation 10(2)(a), or
 - (b) where the employee has given a notice of variation under regulation 10(4) or (7), on the days or dates specified in that notice (or the last such date if the employee has varied the choice more than once).]
 - (2) In a case where—
 - (a) the employee has chosen to begin his period of leave on the date on which the child is placed with the adopter, and
 - (b) he is at work on that date,

the employee's period of leave begins on the day after that date.

Textual Amendments

F17 Reg. 11(1) substituted (8.3.2024 with effect from 6.4.2024 in accordance with reg. 5 of the amending S.I.) by The Paternity Leave (Amendment) Regulations 2024 (S.I. 2024/329), regs. 2, 14 (with reg. 6)

Commencement Information

I8 Reg. 11 in force at 8.12.2002, see **reg. 1**

[F18Change in circumstances

- **11A.**—(1) This regulation applies where an employee is otherwise entitled to paternity leave in respect of a child but a relevant event, as specified in paragraph (2), occurs.
 - (2) A relevant event as referred to in paragraph (1) occurs when—

- (a) the employee is notified that the child will no longer be placed with the person with whom the child was to be placed for adoption, or
- (b) the child—
 - (i) dies, or
 - (ii) is returned after being placed for adoption.
- (3) In a case where this regulation applies, an employee is not entitled to be absent from work on paternity leave after the end of a period of eight weeks following the end of the relevant week specified in paragraph (4), except in the circumstances mentioned in paragraph (5).
 - (4) The relevant week referred to in paragraph (3) is—
 - (a) in a case falling within paragraph (2)(a), the week during which the person with whom the child was to be placed for adoption is notified that the placement will not be made;
 - (b) in a case falling within paragraph (2)(b)(i), the week during which the child dies;
 - (c) in a case falling within paragraph (2)(b)(ii), the week during which the child is returned.
- (5) Where the employee has complied with the requirements in regulation 6 (notice and evidential requirements for leave under regulation 4 (birth)) or regulation 10 (notice and evidential requirements for leave under regulation 8 (adoption)), as the case may be, the employee will remain entitled to any period of leave which has been specified in a notice given, before the day on which the relevant event occurs, under whichever of those regulations is relevant.
- (6) Where paragraph (5) applies, no further notices may be served under regulation 6 or 10, other than a notice under regulation 6(5)(b) or 10(4)(b), as the case may be.
 - (7) In this regulation—
 - (a) "week" means the period of seven days beginning with Sunday;
 - (b) references to the death of a child are to be read, in relation to a child stillborn after twenty-four weeks of pregnancy, as references to the birth of the child.]

Textual Amendments

F18 Reg. 11A inserted (8.3.2024 with effect from 6.4.2024 in accordance with reg. 5 of the amending S.I.) by The Paternity Leave (Amendment) Regulations 2024 (S.I. 2024/329), regs. 2, 15 (with reg. 6)

Application of terms and conditions during paternity leave

- 12.—(1) An employee who takes paternity leave—
 - (a) is entitled, during the period of leave, to the benefit of all of the terms and conditions of employment which would have applied if he had not been absent, and
 - (b) is bound, during that period, by any obligations arising under those terms and conditions, subject only to the exception in section 80C(1)(b) of the 1996 Act(1).
- (2) In paragraph (1)(a), "terms and conditions of employment" has the meaning given by section 80C(5) of the 1996 Act, and accordingly does not include terms and conditions about remuneration.
- (3) For the purposes of section 80C of the 1996 Act, only sums payable to an employee by way of wages or salary are to be treated as remuneration.

⁽¹⁾ Section 80C was inserted by section 1 of the Employment Act 2002.

Commencement Information

I9 Reg. 12 in force at 8.12.2002, see reg. 1

Right to return after paternity leave

- 13.—(1) An employee who returns to work after a period of paternity leave which was—
 - (a) an isolated period of leave, or
- [F19(b)] the last of two or more consecutive periods of statutory leave which did not include any—
 - (i) period of parental leave of more than four weeks; or
 - (ii) period of statutory leave which when added to any other periods of statutory leave (excluding parental leave) taken in relation to the same child means that the total amount of statutory leave taken in relation to that child totals more than 26 weeks,]

is entitled to return from leave to the job in which he was employed before his absence.

- (2) An employee who returns to work after a period of paternity leave not falling within the description in paragraph (1)(a) or (b) above is entitled to return from leave to the job in which he was employed before his absence, or, if it is not reasonably practicable for the employer to permit him to return to that job, to another job which is both suitable for him and appropriate for him to do in the circumstances.
- (3) The reference in paragraphs (1) and (2) to the job in which an employee was employed before his absence is a reference to the job in which he was employed—
 - (a) if his return is from an isolated period of paternity leave, immediately before that period began;
 - (b) if his return is from consecutive periods of statutory leave, immediately before the first such period.

Textual Amendments

F19 Reg. 13(1)(b) substituted (1.12.2014) by The Paternity and Adoption Leave (Amendment) Regulations 2014 (S.I. 2014/2112), regs. 1(3), 6

Commencement Information

I10 Reg. 13 in force at 8.12.2002, see reg. 1

Incidents of the right to return after paternity leave

- **14.**—(1) An employee's right to return under regulation 13 is a right to return—
 - (a) with his seniority, pension rights and similar rights—
 - (i) in a case where the employee is returning from consecutive periods of statutory leave which included a period of additional adoption leave or additional maternity leave, as they would have been if the period or periods of his employment prior to the additional adoption leave or (as the case may be) additional maternity leave were continuous with the period of employment following it;
 - (ii) in any other case, as they would have been if he had not been absent, and
 - (b) on terms and conditions not less favourable than those which would have applied if he had not been absent.

- (2) The provision in paragraph (1)(a)(i) concerning the treatment of periods of additional maternity leave or additional adoption leave is subject to the requirements of [F20] paragraphs 5, 5B and 6 of Schedule 5 to the Social Security Act 1989 (equal treatment under pension schemes: maternity absence, adoption leave and family leave).]
- (3) The provisions in paragraph (1)(a)(ii) and (b) for an employee to be treated as if he had not been absent refer to his absence—
 - (a) if his return is from an isolated period of paternity leave, since the beginning of that period;
 - (b) if his return is from consecutive periods of statutory leave, since the beginning of the first such period.

Textual Amendments

F20 Words in reg. 14(2) substituted (9.2.2005) by The Pensions Act 2004 (Commencement No. 2, Transitional Provisions and Consequential Amendments) Order 2005 (S.I. 2005/275), art. 5(2)

Commencement Information

III Reg. 14 in force at 8.12.2002, see reg. 1

Changes to legislation:There are currently no known outstanding effects for the The Paternity and Adoption Leave Regulations 2002, PART 2.