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STATUTORY INSTRUMENTS

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**2014 No. 3092**

**TERMS AND CONDITIONS OF EMPLOYMENT**

**The Shared Parental Leave and Paternity and Adoption  
Leave (Adoptions from Overseas) Regulations 2014**

*Made* - - - - 26th November 2014

*Coming into force* - - 5th April 2015

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 a resolution of each House of Parliament.

The Secretary of State, in exercise of the powers conferred by sections 47C(2), 75A(1), (2A) and (2B), 75B(3)(a) and (aa), and (3A), 75D(1)(a) and (2), 75G(1) to (6), 75H(1), (4), (7) to (14), (16), and (17), 75I(1), (4), and (5), 75J, 75K(1) and (6), 80B(2) and (4A), and 99 of the Employment Rights Act 1996(2), makes the following Regulations.

**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 2014 and come into force on 5th April 2015.

**Interpretation**

2. In these Regulations—

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- (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 47C was inserted by the Employment Relations Act 1999 (c. 26), Schedule 4, Part 3, paragraphs 5 and 8, and amended by the Children and Families Act 2014, Schedule 7, paragraphs 29 and 31; there are other amending instruments but none is relevant. Sections 75A and 75B were inserted by the Employment Act 2002 (c. 22), section 3, and amended by the Children and Families Act 2014, section 118(4) and (5) respectively. Section 75D was inserted by the Employment Act 2002, section 3; there are amending instruments but none are relevant. Sections 75G to 75K were inserted by the Children and Families Act 2014, section 117(1). Sections 75G and 75H were modified by S.I. 2014/3091. Section 80B was inserted by the Employment Act 2002, section 1, and subsection (4A) was inserted by the Children and Families Act 2014, section 118(7); there are other amending instruments but none is relevant. Section 99 was substituted by the Employment Relations Act 1999, Schedule 4, Part 3, paragraphs 5 and 16, and amended by the Children and Families Act 2014, Schedule 7, paragraphs 29 and 39; there are other amending instruments but none is relevant.

“the Application Regulations” means the Employment Rights Act 1996 (Application of Sections 75G and 75H to Adoptions from Overseas) Regulations 2014<sup>(3)</sup>;

“adoption from overseas” means the adoption of a child who enters Great Britain 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;

“enter Great Britain” means enter Great Britain from outside the United Kingdom in connection with or for the purposes of adoption.

## PART 2

### Application of the Maternity and Adoption Leave (Curtilment) Regulations 2014

#### **Application of the Maternity and Adoption Leave (Curtilment) Regulations 2014 to adoptions from overseas**

3.—(1) The provisions of the Maternity and Adoption Leave (Curtilment) Regulations 2014<sup>(4)</sup>, 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 below.

(2) Any references in the provisions of the Maternity and Adoption Leave (Curtilment) Regulations 2014 to the provisions in Chapter 1B of Part 8 of the Employment Rights Act 1996 Act<sup>(5)</sup> must be construed as references to the provisions of Chapter 1B as modified by the Application Regulations.

#### **Modifications to the Maternity and Adoption Leave (Curtilment) Regulations 2014**

4. The Maternity and Adoption Leave (Curtilment) Regulations 2014 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 Great Britain 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 Parental and Adoption Leave Regulations 2002<sup>(6)</sup>”;
    - (b) for the definition of “AP” substitute—
 

““AP” means the person who at the date on which C enters Great Britain is married to, or the civil partner or the partner of, A;”;
    - (c) after the definition of “declaration of consent and entitlement”, insert—
 

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

(3) S.I. 2014/3091.

(4) S.I. 2014/3052.

(5) Chapter 1B was inserted by the Children and Families Act 2014, section 117.

(6) S.I. 2002/2788.

## PART 3

### Application of the Shared Parental Leave Regulations 2014

#### **Application of the Shared Parental Leave Regulations 2014 to adoptions from overseas**

7.—(1) The provisions of the Shared Parental Leave Regulations 2014(7) 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 below.

(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 Shared Parental Leave Regulations 2014 mentioned in paragraph (2) to the provisions in Chapter 1B of Part 8 of the Employment Rights Act 1996 Act 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 Shared Parental Leave Regulations 2014 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 Shared Parental Leave Regulations 2014 for the purposes of adoptions from overseas**

8. The Shared Parental Leave Regulations 2014 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 Great Britain 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 Parental and Adoption Leave Regulations 2002;”;

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

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

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

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

“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 Part 3 of the Adoptions with a Foreign Element Regulations 2005<sup>(8)</sup> applies to A and A is habitually resident in Wales, the Welsh Ministers;
- (b) where the Adoptions with a Foreign Element (Scotland) Regulations 2009<sup>(9)</sup> apply to A and A is habitually resident in Scotland, the Scottish Ministers; and
- (c) 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 Great Britain”.

(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 Great Britain”.

(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 Great Britain (or where more than one child is adopted as a result of the same arrangement, the date on which the first child entered Great Britain) 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 Great Britain (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 Great Britain and C enters Great Britain 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 Great Britain 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—

<sup>(8)</sup> S.I. 2005/392.

<sup>(9)</sup> S.I. 2009/182.

- “(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 Great Britain (except as provided for in paragraph (4));”.
- (4) For paragraph (4) substitute—
- “(4) Where a notice is given under paragraph (1) before the date that C enters Great Britain, AP must give the date of C’s entry into Great Britain 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 Great Britain—
- (i) contain a start for the leave which is the day on which C enters Great Britain or which is expressed as a number of days following the date of C’s entry into Great Britain;
- (ii) contain an end date expressed as a number of days following the date of C’s entry into Great Britain.”.
- 18.** In regulation 34 (entitlement in the event of disrupted placement or death), for paragraph (b) substitute—
- “(b) regulation 28 of the Adoptions with a Foreign Element Regulations 2005 or regulation 31 of the Adoptions with a Foreign Element (Scotland) Regulations 2009 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 Great Britain;”.
- 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 28 of the Adoptions with a Foreign Element Regulations 2005 or regulation 31 of the Adoptions with a Foreign Element (Scotland) Regulations 2009 applies,
- the modifications set out in paragraphs (3), (5) and (6) below 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 28 of the Adoptions with a Foreign Element Regulations 2005 or regulation 31 of the Adoptions with a Foreign Element (Scotland) Regulations 2009 applies,

the modifications set out in paragraphs (4) to (6) below 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 28 of the Adoptions with a Foreign Element Regulations 2005 or regulation 31 of the Adoptions with a Foreign Element (Scotland) Regulations 2009 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 28 of the Adoptions with a Foreign Element Regulations 2005 or regulation 31 of the Adoptions with a Foreign Element (Scotland) Regulations 2009 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 Paternity and Adoption Leave (Adoption from Overseas) Regulations 2003

**22.** The Paternity and Adoption Leave (Adoption from Overseas) Regulations 2003<sup>(10)</sup> are amended as follows.

**23.** In regulation 4 (interpretation)—

(a) after sub-paragraph (a) of paragraph (2) insert—

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

“child” means a person who enters Great Britain 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 Great Britain;”;

(b) in sub-paragraph (b) of paragraph (2)—

(i) in the definition of “relevant domestic authority” for “Intercountry Adoption (Hague Convention) Regulations 2003” substitute “Adoptions with a Foreign Element Regulations 2005”;

(ii) after the definition of “relevant domestic authority” insert—

““shared parental leave” means leave under section 75G of the 1996 Act.”.

**24.** In regulation 7 (entitlement to paternity leave: adoption from overseas)—

<sup>(10)</sup> S.I. 2003/921.

- (a) in paragraph (1) of the substituted regulation 8, for “An” substitute “Subject to paragraph (1A), an”; and
  - (b) after paragraph (1) of the substituted regulation 8, 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)—
- (a) in paragraph (1) of substituted regulation 15, for “An” substitute “Subject to paragraph (1A), an”;
  - (b) for sub-paragraph (a) in paragraph (1) of substituted regulation 15, substitute—
    - “(a) is the child’s adopter; and”;
  - (c) after paragraph (1) of substituted regulation 15, 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.”; and
  - (d) omit paragraphs (2) and (3) of the substituted regulation 15.

26th November 2014

*Jo Swinson*  
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Employment Relations and Consumer Affairs  
Department for Business, Innovation and Skills

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## 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 Great Britain 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 (Curtailed) Regulations 2014 apply to adoptions from overseas and regulations 4 to 6 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 2014 apply to adoptions from overseas.

Regulations 8 to 21 set out the modifications which apply to the Shared Parental Leave Regulations 2014 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 2003 to mirror the amendments made to the Paternity and Adoption Leave Regulations 2002, in relation to births and adoptions in Great Britain, by the Paternity and Adoption Leave (Amendment) Regulations 2014.

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.