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DRAFT STATUTORY INSTRUMENTS

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**2010 No.**

**The Additional Paternity Leave Regulations 2010**

**PART 2**

**ADDITIONAL PATERNITY LEAVE (BIRTH)**

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

**4.—(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 6 and, where applicable, regulation 7; and
- (c) C’s mother (“M”) satisfies the conditions specified in paragraph (5) and has signed the mother declaration referred to in regulation 6.

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

- (a) has been continuously employed with an employer for a period of not less than 26 weeks ending with the relevant week;
- (b) remains in continuous employment with that employer until the week before the first week of P’s additional paternity leave;
- (c) is either—
  - (i) C’s father, or
  - (ii) married to or the partner or civil partner of M, but not C’s father; and
- (d) has, or expects to have, the main responsibility (apart from any responsibility of M) for the upbringing of C.

(3) The references in this regulation to the relevant week are to the week immediately preceding the 14th week before C’s expected week of birth.

(4) P shall be treated as having satisfied the condition in paragraph (2)(a) on the date of C’s birth, notwithstanding the fact that P has not then been continuously employed for the period referred to in that paragraph, where—

- (a) the date on which C is born is earlier than the relevant week; and
- (b) P would have been continuously employed for such a period if P’s employment had continued until the relevant week.

(5) The conditions referred to in paragraph (1)(c) are that M—

- (a) is entitled by reference to becoming pregnant with C to one or more of the following—
  - (i) maternity leave;
  - (ii) statutory maternity pay; or
  - (iii) maternity allowance; and

(b) has, or is treated as having, returned to work under regulation 25.

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

#### **Options in respect of leave under regulation 4**

5.—(1) P may take leave under regulation 4 at any time within the period which begins 20 weeks after the date on which C is born and ends 12 months after that date.

(2) The minimum period of leave which may be taken is two 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 P gave leave notice under regulation 6(1).

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

#### **Notice and evidential requirements for leave under regulation 4**

6.—(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) a mother declaration.

(2) In this regulation—

- (a) "a leave notice" means a written notice specifying—
  - (i) the week which was C's expected week of birth;
  - (ii) C's date of birth;
  - (iii) the dates P has chosen in accordance with regulation 5 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 4(2)(c) and (d).
- (c) "mother declaration" means a written declaration by M stating—
  - (i) M's name and address;
  - (ii) the date M intends to return to work (within the meaning of regulation 25);
  - (iii) M's National Insurance number;
  - (iv) that P satisfies the conditions in regulation 4(2)(c) and (d);
  - (v) that P is to M's knowledge the only person exercising the entitlement to additional paternity leave in respect of C; and
  - (vi) that M consents to E processing such of M'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) a copy of C's birth certificate; and

- (b) the name and address of M’s employer (or, if M is self-employed, M’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 4(2)(c) or (d); or
  - (b) M no longer satisfies the conditions in regulation 4(5).
- (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 7, 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 in P’s leave notice, or, where applicable, last varied in accordance with regulation 7; 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 7,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 7; and
  - (b) shall be treated as additional paternity leave for the purpose of these Regulations.

**Variation or cancellation of leave under regulation 4 before leave period has begun**

7.—(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 6(2).

#### **Employer’s confirmation of period of leave under regulation 4**

**8.—**(1) Subject to paragraph (2), where P gives leave notice under regulation 6(1) or subsequent notice under regulation 7(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 6(5) or 7(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 6(5) or 7(2).

#### **Commencement of leave under regulation 4**

**9.** Save where regulations 6(5) or 7(2) apply, P’s period of additional paternity leave under regulation 4 begins—

- (a) on the start date specified in P’s leave notice under regulation 6(1), or,
- (b) where applicable, the date specified in P’s most recent subsequent notice under regulation 7(1).

#### **Entitlement to additional paternity leave (birth) in the event of the mother’s death**

**10.—**(1) In a case where M has died before the end of the period of twelve months beginning with C’s birth, the provisions in regulations 4 to 9 shall apply with the following modifications.

- (2) In regulation 4 (entitlement to additional paternity leave (birth))—
- (a) paragraph (1)(b) shall apply as if the references in that paragraph—
    - (i) to regulation 6 were references to regulation 12;
    - (ii) to regulation 7 were references to regulation 13;
  - (b) paragraph (1)(c) shall be replaced by—
    - “(c) C’s mother (“M”) satisfied, before her death, one or more of the conditions specified in paragraph (5)(a) (or would have satisfied such conditions but for the fact that M has died).”;
  - (c) the condition in paragraph (2)(c)(ii) shall be taken to be satisfied if it would have been satisfied but for the fact that M has died; and
  - (d) paragraph (5)(b) shall be omitted.
- (3) Regulation 5 (options in respect of leave) shall be replaced by regulation 11.

- (4) Regulation 6 (notice and evidential requirements for leave) shall be replaced by regulation 12.
- (5) Regulation 7 (variation or cancellation of leave) shall be replaced by regulation 13.
- (6) Regulations 8 (confirmation of leave) and 9 (commencement of leave) apply as if the references in those regulations—
  - (a) to regulation 6(1) were references to regulation 12(1);
  - (b) to regulation 6(5) were references to regulation 12(7);
  - (c) to regulation 7(1) were references to regulation 13(2); and
  - (d) to regulation 7(2) were references to regulation 13(3).

#### **Options in respect of leave under regulation 4 in the event of the mother's death**

**11.**—(1) P may take leave under regulation 4, as modified by regulation 10, at any time within the period beginning with the date of M's death and ending 12 months after the date of C's birth.

(2) The minimum period of leave which may be taken is two 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 4, as modified by regulation 10, if P has already taken a period of additional paternity leave in respect of C which has ended before the date of M's death.

(5) If P is on leave under regulation 4 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 4, as modified by regulation 10, provided—

- (a) P satisfies the conditions for eligibility set out in regulation 4 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 birth.
- (6) This regulation is subject to regulation 24 (disrupted placement or death of a child).

#### **Notice and evidential requirements for leave under regulation 4 in the event of the mother's death**

**12.**—(1) As soon as reasonably practicable after the date of M'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 week which was C's expected week of birth;
    - (ii) C's date of birth;
    - (iii) the dates P has chosen in accordance with regulation 11 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 4(2)(c) and (d), as modified by regulation 10;
  - (iii) M's name and last address;
  - (iv) the date of M's death; and
  - (v) M's National Insurance number.
- (c) "the relevant date" is eight weeks after the date of M'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) a copy of C's birth certificate; and
  - (b) the name and address of M's employer (or, if M was self-employed, M'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 that M has died 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 4(2)(c) or (d) as modified by regulation 10, 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 13, 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 13; 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 13,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 13; and
- (b) shall be treated as additional paternity leave for the purpose of these Regulations.

**Variation or cancellation of leave under regulation 4 in the event of the mother's death**

13.—(1) Notwithstanding regulation 9 as modified by regulation 10, 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 it 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 12(2).