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STATUTORY INSTRUMENTS

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**2002 No. 2788**

**The Paternity and Adoption Leave Regulations 2002**

**PART 1**

**GENERAL**

**Citation and commencement**

1. These Regulations may be cited as the Paternity and Adoption Leave Regulations 2002 and shall come into force on 8th December 2002.

**Interpretation**

2.—(1) In these Regulations—

“the 1996 Act” means the Employment Rights Act 1996;

“additional adoption leave” means leave under section 75B of the 1996 Act;

“additional maternity leave” means leave under section 73 of the 1996 Act;

“adopter”, in relation to a child, means a person who has been matched with the child for adoption, or, in a case where two people have been matched jointly, whichever of them has elected to be the child’s adopter for the purposes of these Regulations;

“adoption agency” has the meaning given, in relation to England and Wales, by section 1(4) of the Adoption Act 1976<sup>(1)</sup> and, in relation to Scotland, by section 1(4) of the Adoption (Scotland) Act 1978<sup>(2)</sup>;

“adoption leave” means ordinary or additional adoption leave;

“child” means a person who is, or when placed with an adopter for adoption was, under the age of 18;

“contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing;

“employee” means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment;

“employer” means the person by whom an employee is (or, where the employment has ceased, was) employed;

“expected week”, in relation to the birth of a child, means the week, beginning with midnight between Saturday and Sunday, in which it is expected that the child will be born;

“ordinary adoption leave” means leave under section 75A of the 1996 Act;

“parental leave” means leave under regulation 13(1) of the Maternity and Parental Leave etc. Regulations 1999<sup>(3)</sup>;

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<sup>(1)</sup> 1976 c. 36; section 1(4) was amended by paragraph 5 of Schedule 4 to the Care Standards Act 2000 (c. 14).

<sup>(2)</sup> 1978 c. 28.

<sup>(3)</sup> SI 1999/3312, to which there are amendments not relevant to these Regulations.

“partner”, in relation to a child’s mother or adopter, means a person (whether of a different sex or the same sex) who lives with the mother or adopter and the child in an enduring family relationship but is not a relative of the mother or adopter of a kind specified in paragraph (2);

“paternity leave” means leave under regulation 4 or regulation 8 of these Regulations;

“statutory leave” means leave provided for in Part 8 of the 1996 Act.

(2) The relatives of a child’s mother or adopter referred to in the definition of “partner” in paragraph (1) are the mother’s or adopter’s parent, grandparent, sister, brother, aunt or uncle.

(3) References to relationships in paragraph (2)—

(a) are to relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would exist but for the adoption, and

(b) include the relationship of a child with his adoptive, or former adoptive, parents,

but do not include any other adoptive relationships.

(4) For the purposes of these Regulations—

(a) a person is matched with a child for adoption when an adoption agency decides that that person would be a suitable adoptive parent for the child, either individually or jointly with another person, and

(b) a person is notified of having been matched with a child on the date on which he receives notification of the agency’s decision, under regulation 11(2) of the Adoption Agencies Regulations 1983<sup>(4)</sup> or regulation 12(3) of the Adoption Agencies (Scotland) Regulations 1996<sup>(5)</sup>;

(c) a person elects to be a child’s adopter, in a case where the child is matched with him and another person jointly, if he and that person agree, at the time at which they are matched, that he and not the other person will be the adopter.

(5) A reference in any provision of these Regulations to a period of continuous employment is to a period computed in accordance with Chapter 1 of Part 14 of the 1996 Act, as if that provision were a provision of that Act.

(6) For the purposes of these Regulations, any two employers shall be treated as associated if—

(a) one is a company of which the other (directly or indirectly) has control; or

(b) both are companies of which a third person (directly or indirectly) has control;

and “associated employer” shall be construed accordingly.

## **Application**

**3.—**(1) The provisions relating to paternity leave under regulation 4 below have effect only in relation to children—

(a) born on or after 6th April 2003, or

(b) whose expected week of birth begins on or after that date.

(2) The provisions relating to paternity leave under regulation 8 and adoption leave under regulation 15 below have effect only in relation to children—

(a) matched with a person who is notified of having been matched on or after 6th April 2003, or

(b) placed for adoption on or after that date.

<sup>(4)</sup> [SI 1983/1964](#).

<sup>(5)</sup> [SI 1996/3266](#).

(3) Regulation 28 (protection from detriment) has effect only in relation to an act or failure to act which takes place on or after 8th December 2002.

(4) For the purposes of paragraph (3)—

(a) where an act extends over a period, the reference to the date of the act is a reference to the last day of that period, and

(b) a failure to act is to be treated as done when it was decided on.

(5) For the purposes of paragraph (4), in the absence of evidence establishing the contrary an employer shall be taken to decide on a failure to act—

(a) when he does an act inconsistent with doing the failed act, or

(b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

(6) Regulation 29 (unfair dismissal) has effect only in relation to dismissals where the effective date of termination (within the meaning of section 97 of the 1996 Act) falls on or after 8th December 2002.